IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14 .12.2006

CORAM:
THE HONOURABLE MR. JUSTICE P.JYOTHIMANI

Writ Petition Nos.

26195, 26196, 26197, 26198, 26199,
26188, 26194, 26189, 26190, 26191,
26192, 26193, 47719, 42523, 43040,
43041 Of 2006

29269, 29270, 39292, 27849, 30332,
34833, 39516, 39517, 39518, 39519,
34700, 25520, 25521, 25522, 25523,
25524, 25525, 25526, 25527, 25528,
24723, 24724, 24725, 41278, 23559,
25167, 25168, 25169, 25387, 25699,
25700, 25007, 25008, 25009, 25447,
25448, 25449, 25450, 25451, 33517,
24285, 30687, 30688, 28015, 28016,
28017, 28018, 28019, 28020, 28021,
28022, 28023 of 2006

27081, 27082, 41290, 24805, 24806,
24807, 24808, 24809, 24810 of 2006

38216, 45043, 45062, 45081 of 2006

26239, 30326, 39363, 34696, 24975,
40363 of 2006

45459 of 2006

34805, 34806, 34807, 34808, 34809,
34810, 34811, 34816, 34817, 34818,
34819, 34820, 34821, 34822, 34823,
34862, 34863, 34864, 34872, 34873,
34874, 34875, 34876, 34877, 34878,
34879, 34880, 34881, 34887, 34888,
34889, 34890, 34891, 34892, 34893,
34894 34895, 34896, 34897 of 2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

45060, 45076, 45077, 45118, 45119,
45120, 45396, 45397, 45422 of 2006

45039, 45040 of 2006

35412, 33427, 34825 of 2006 and
46245/06

and W.P.M.P.No.1,2 & 3 of 2006

W.P.No.25387 of 2006

1. S. Kannan
2. K. SENTHILKUMAR
3. C. SAKTHIVEL
4. S. THANGARAJ
5. R. SELVAM
6. G. SASIKUMAR
7. GUNASEKARAN
8. C. SAKTHIVEL
9. R. RAVICHANDIRAN
10. D. SHANMUGAM
11. P. SABAPATHI
12. K. ELANGOVAN
13. P. VIJAYAN
14. K. RAMASAMY
15. P. SELVARAJ
16. N. KRISHNAMOORTHI
17. A.V. SANKAR ... PETITIONERS

WP 26239/06

1. R. LAWRENCE
2. E. CROSS MANUVEL RAJ
3. A. LEONS
4. S. ROBINSON
5. A. CHANDRABOSE
6. C. SUNDARAM
7. T. KASI NADAR
8. V. MADASAMY
9. P. CHARLES
10. P.V. VINAYAGAM
11. V.B. RAMESH KUMAR

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

12. M. STANLEY
13. C. NAGENDRA KUMAR
14. A. SWAMY DHAS
15. K.R. EDWIN BABU SINGH
16. C. JOHN XAVIER RAJ ... PETITIONERS IN WP NO. 26239/06

VS

1. THE GOVERNMENT OF TAMIL NADU
REP BY THE SECRETARY
TRANSPORT AND HIGHWAYS DEPARTMENT
FORT SAINT GEORGE CHENNAI 9

2. TAMIL NADU STATE TRANSPORT CORPORATION
MADURAI DIVISION III
REP BY ITS MANAGING DIRECTOR
MADURAI .. RESPONDENTS IN WP NOS.26239, 30326, 34696

.. Respondents 1 and 2 in W.P.No.24975/06

TO Issue a Writ of certiorarified Mandamus after calling for the records relating to Clause 3 readwith Clause 4(iii) of the G.O. Ms. No. 41, Transport (C1) Department dt: 13.07.2006 issued by the 1st Respondent and to quash the same insofar as it gives preference only to persons who were recruited after 1997 as Conductors/Drivers as being illegal, arbitrary and discriminatory and in violation of Art. 14 and 16 of the Constitution of India and consequently direct the respondents to appoint the petitioners as Conductors/Drivers in preference to those recruited before 1997 WP NO. 26239/06, 30326, 34696/06

WP NO. 33517/06

1. KINGSLI
2. T. EDVIN RAJ
3. E. GUNASEKAR
4. G.A. ASKIN BRIGHT
5. A. SOOSAI MANICKAM
6. P. THIRUNAVUKARASU
7. V. SEKAR
8. G. KUMAR
9. D. EBENESAR
10. S. RAMAN

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

11. R. VIJAY SINGH
12. I. RADHAKRISHNAN
13. R. RAJARAJAN
14. R. MURALI
15. G. DEVARJ
16. S. SUYAMBU
17. D. DOSS
18. K. POOGAVANAM
19,. K. VIMALRAJ
20. R.I. PADMANABHAN
21. S. VARAPRASADH
22. K. RAVANAN
23. J. RABART JONSELY
24. R. PRAKASH
25. G. DAMODARAN
26. P. PALANI
27. A. KUMARAN .. PETITIONERS

VS

1. THE GOVERNMENT OF TAMIL NADU
REP BY ITS SECRETARY
TRANSPORT DEPARTMENT,
FORT SAINT GEORGE, CHENNAI - 9.

2. THE GENERAL MANAGER (ADMIN)
METROPOLITAN TRANSPORT CORPORATION (CHENNAI) LTD
PALLAVAN SALAI, CHENNAI - 2 .. RESPONDENTS

WP NO. 45459/06

1. J. PETER JAMES
2. A. JOHN
3. S. SASIKUMAR
4. M. RAJAN
5. T. MOHANAN
6. T. JUSTIN BABU .. PETITIONERS

VS

1. THE STATE OF TAMIL NADU
REP BY ITS SECRETARY
TRANSPORT DEPARTMENT,
CHENNAI 600 009.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. THE MANAGEMENT OF TAMIL NADU
STATE TRANSPORT CORPORATION
REP BY ITS MANAGING DIRECTOR,
DIVISION III MADURAI
MADURAI ... Respondents

M. RANJIT .. PETITIONER IN WP NO. 25167/06
R. STALIN JACOB .. PETITIONER IN WP NO. 25168/06
R. PADMA VIJAYAN ..PETITIONER IN WP NO. 25169/06
K. MUTHUKUMAR .. PETITIOENR IN WP NO. 25699/06
K. SARAVANAN .. PETITIOENR IN WP NO. 25700/06
N. VIJAYAN
S/O NARAYANA PILLAI .. PETITIOENR IN WP NO. 25007/06
N. VIJAYAN
S/O NATARAJAN .. PETITIOENR IN WP NO. 25008/06
T. JOHN KUMAR .. PETITIOENR IN WP NO. 25009/06
A. BARATHAN .. PETITIOENR IN WP NO. 25447/06
S. SENTHILKUMAR .. PETITIOENR IN WP NO. 25448/06
C. SUBRAMANIYAN .. PETITIOENR IN WP NO. 25449/06
R. SAKTHIVEL .. PETITIOENR IN WP NO. 25450/06
P. SIVAKUMAR .. PETITIOENR IN WP NO. 25451/06
R. CHINNATHAMBI .. PETITIOENR IN WP NO. 26188/06
P. VENKATESAN .. PETITIOENR IN WP NO. 26189/06
A. RAJESHKUMAR .. PETITIOENR IN WP NO. 26190/06
V. MUTHAMIZH .. PETITIOENR IN WP NO. 26191/06
G. JAGATHEESAN .. PETITIOENR IN WP NO. 26192/06
V. BALAKUMAR .. PETITIOENR IN WP NO. 26193/06
K. THANIKACHALAM .. PETITIOENR IN WP NO. 26194/06
D. JAYAKUMAR .. PETITIOENR IN WP NO. 26195/06
S.P. AJIT KUMAR .. PETITIOENR IN WP NO. 26196/06
S. KARUNAKARAN .. PETITIOENR IN WP NO. 26197/06
M. NARENDRA KUMAR .. PETITIOENR IN WP NO. 26198/06
M. JAYASINGH .. PETITIOENR IN WP NO. 26199/06
P. SUBRAMANIYAN .. PETITIOENR IN WP NO. 29269/06
P. PALANISAMY .. PETITIOENR IN WP NO. 29270/06
R. ANANDHAN .. PETITIOENR IN WP NO. 39292/06
G. UMASANKAR .. PETITIOENR IN WP NO. 27849/06
T.C. RAJAN .. PETITIOENR IN WP NO. 30332/06
J. BENSINGH .. PETITIOENR IN WP NO. 34833/06
P. SIVASUBRAMANIAN .. PETITIOENR IN WP NO. 39516/06
K. SELVARAJ .. PETITIOENR IN WP NO. 39517/06
K. GOVINDARAJ .. PETITIOENR IN WP NO. 39518/06
P. SIVAKUMAR .. PETITIOENR IN WP NO.39519/06
P. PARTHIBAN .. PETITIOENR IN WP NO. 34700/06

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

M.Senthil Kumar ..Petitioner in WP.25520/06

P.Pandaraman ..Petitioner in WP.25521/06

C.Vijayakumar ..Petitioner in WP.25522/06

M.Sivakumar ..Petitioner in WP.25523/06

M.Sakthivel ..Petitioner in WP.25524/06

G.Krishnan ..Petitioner in WP.25525/06

C.Winford Bobby ..Petitioner in WP.25526/06

N.Muniappan ..Petitioner in WP.25527/06

R.Palanivel ..Petitioner in WP.25528/06

R.Parameswaran Pillai ..Petitioner in WP.24723/06

G.Manikandan ..Petitioner in WP.24724/06

S.Narayana Perumal ..Petitioner in WP.24725/06

M.Muthuramalingam ..Petitioner in WP.41278/06

K.Surendran ..Petitioner in WP.23559/06

C.Marimuthu ..Petitioner in WP.27081/06

P.Govindaraju ..Petitioner in WP.27082/06

S.D.Surendran ..Petitioner in WP.41290/06

J.Balaji ..Petitioner in WP.24805/06 and 24806/06.

P.Raju ..Petitioner in WP.24807/06

K.Ramachandran ..Petitioner in WP.24808/06

P.Raja ..Petitioner in WP.24809/06

K.Ramachandran Balasubramanian ..Petitioner in WP.24810/06

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

T.Ramakrishnan
R.Elilarasan
V.K.Moorthy ..Petitioners in WP.38216/06

K.Gandhiraj ..Petitioner in WP.45043/06

C.Anbazhagan ..Petitioner in WP.45062/06

S.Krishnamurthy ..Petitioner in WP.45081/06

1. V. Thavasi Perumal
2. K.Russalian
3. P.Vijayarajan
4. G.D.Dhanapal
5. S.S.Benukumar
6. P.Pretheviraj
7. C.Subramanioan
8. V.C.Mohan Dhas ..Petitioner in WP.30326/06

Anna Transport Corporation,
Indian National Trade Union,
Congress Tozhilalar Sangam,
rep. by its President,
Salem 5. ..Petitioner in WP.39363/06

R. Jayendhan ..Petitioner in WP.34696/06

G.Neela Raj ..Petitioner in WP.24975/06

K.Baskaran ..Petitioner in WP.40363/06

R.Sivakumar ..Petitioner in WP.34805/06

P.Kanagaraj ..Petitioner in WP.34806/06

R. Parthiban ..Petitioner in WP.34807/06

S.Kathirvel ..Petitioner in WP.34808/06

A.Marimuthu ..Petitioner in WP.34809/06

M.Moorthy ..Petitioner in WP.34810/06

G. Sennimalai ..Petitioner in WP.34811/06

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

R.Sakthivelu ..Petitioner in WP.34816/06

V. Senthilkumar ..Petitioner in WP.34817/06

S.Thangavel ..Petitioner in WP.34818/06

P. Chinnasamy ..Petitioner in WP.34819/06

M.K.Shivakumar ..Petitioner in WP.34820/06

S.Subramanian ..Petitioner in WP.34821/06

N. Vanchimuthu ..Petitioner in WP.34822/06

P.Palaniappan ..Petitioner in WP.34823/06

P.Manoharan ..Petitioner in WP.34862/06

S.Palanivel ..Petitioner in WP.34863/06

A.Chandrasekaran ..Petitioner in WP.34864/06

S.Thukkairaj ..Petitioner in WP.34872/06

T.Ruthrappan ..Petitioner in WP.34873/06

L.Murugasamy ..Petitioner in WP.34874/06

T. Muthukumar ..Petitioner in WP.34875/06

M.Murthy ..Petitioner in WP.34876/06

J.Glandance ..Petitioner in WP.34877/06

K.Senniappan ..Petitioner in WP.34878/06

R.Chandran ..Petitioner in WP.34879/06

K.Kumaresan ..Petitioner in WP.34880/06

K.Shanmugasundaram ..Petitioner in WP.34881/06

K.Subramaniam ..Petitioner in WP.34887/06

M.Kuppusamy ..Petitioner in WP.34888/06

K.Ravikumar ..Petitioner in WP.34889/06

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

S.John Philip ..Petitioner in WP.34890/06

D.Panjalingam ..Petitioner in WP.34891/06

V.Manimuthu ..Petitioner in WP.34892/06

S.Singadevan ..Petitioner in WP.34893/06

A.Thiralogasundar ..Petitioner in WP.34894/06

R.Chelladurai ..Petitioner in WP.34895/06

L.Anandhakumar ..Petitioner in WP.34896/06

T.Subramanian ..Petitioner in WP.34897/06

T.Kathiresan ..Petitioner in WP.34285/06

M.Munibasavarajan ..Petitioner in WP.28015/06

V.Manimozhi ..Petitioner in WP.28016/06

T.Mani ..Petitioner in WP.28017/06

N.Boobesh ..Petitioner in WP.28018/06

L.Madeswaran ..Petitioner in WP.28019/06

K.Murugan ..Petitioner in WP.28020/06

G.Gnanavel ..Petitioner in WP.28021/06

M.Sakthivel ..Petitioner in WP.28022/06

D.Santhamoorthi ..Petitioner in WP.28023/06

N.Chandrakumaran ..Petitioner in WP.45060/06

M.Srinivasan ..Petitioner in WP.45076/06

P.Arjunan ..Petitioner in WP.45077/06

N.Rajendran ..Petitioner in WP.45118/06

K.Krishnan ..Petitioner in WP.45119/06

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

C.Chinnasamy ..Petitioner in WP.45120/06

K.Arulselvan ..Petitioner in WP.45396/06

P.Arunachalam ..Petitioner in WP.45397/06

P.P.Murugan ..Petitioner in WP.45422/06

C.Jayakumar ..Petitioner in WP.45039/06

S.Subramanian ..Petitioner in WP.45040/06

V.Poornachandran ..Petitioner in WP.43040/06

R.Manokaran ..Petitioner in WP.43041/06

A.M.Karthikeyan ..Petitioner in WP.35412/06

Dr.Ambedkar Transport Corporation
Task Force Union,
rep. by its General Secretary,
Kannadapalayam,
Chennai 66. ..Petitioner in WP.33427/06

D.Vijayan
R. Jayakumar ..Petitioners in WP.34825/06

M.Sivakumar ..Petitioner in WP.42523/06

S.Senthil ..Petitioner in WP.46245/06

K. Chandramohan ..Petitioner in WP.47719/06

1. Velu
2. C. Ramesh
3. C. Sureshkumar
4. D. Boopthi
5. G. Janipremakumar
6. N. Yuvaraj
7. M. Gunanithi
8. A. Srinivasan
9. J. Arthar Jankins
10. P. rajamani
11. T. Jayaraj
12. K.P. Chandrasekaran

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

13. E. Shaji
14. M. Kingsly
15. N. Vijayakumar
16. A. Sudakar
17. A. Xavier Alias
18. C. Ranganathan
19. K. Charles
20. J. Sivakumar
21. G. Sankar
22. J. Jose
23. P. Rajkumar
24. S. Vasanth
25. D. Sathishkumar
26. S. Padmanadoss
27. S. Raju
28. B. Sankar W.P.No.30687/2006

1. Velu
2. C. Ramesh
3. C. Sureshkumar
4. D. Boopathi
5. G. Janipremakumar
6. N. Yuvaraj
7. M. Gunanithi
8. A. Srinivasan
9. J. Arthar Jankins
10. P. rajamani
11. T. Jayaraj
12. K.P. Chandrasekaran
13. E. Shaji
14. M. Kingsly
15. N. Vijayakumar
16. A. Sudakar
17. A. Xavier Alias
18. C. Ranganathan
19. K. Charles
20. J. Sivakumar
21. G. Sankar
22. J. Jose
23. P. Rajkumar
24. S. Vasanth
25. D. Sathishkumar
26. S. Padmanadoss
27. S. Raju
28. B. Sankar ... Petitioners in w.P.30687/06

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

1. K.P.Srinivasan
2. L. Kasi
3. J. Amalasvaran
4. S. Suresh
5. G. Ravi
6. B. Murali
7. S. Murugan
8. A.G.Ragu
9. D. Ramesh
10. R. Gobi
11. R. Ruban
12. T. Jayasingh
13. R. Ramesh
14. A. Thamaraiselvan
15. T. Ashokkumar
16. K. Hemanathan
17. J. Murugan
18. S. Srinivasan
19. S. Masilamani
20. V.V. Gubara Ramanujam
21. D. Srinivasan
22. K. Manickam ... Petitioners W.P.No.30688 of 2006

-Vs-

1. The Government of Tamil Nadu
rep. by its Secretary,
Transport Department,
Fort St. George, Chennai 9.

2. The General Manager,
State Express Transport Corporation,
Pallavan Salai, Chennai 2. ..Respondents in WP.Nos.25167 to 25169/06
25007 to 25009/06, 34700, 24724/06 and 24725/06.

Tamil Nadu State Transport Corporation Ltd.,
rep. by its Managing Director,
37, Mettupalayam Road,
Coimbatore. ..Respondent in WP.Nos.34805/06,to 34811,
and 34816 to 34823/06, 34872/06 to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

34881, 34887 to 34891/06, 34893,
34894 to 34897/86.

1) The State of Tamilnadu rep. by its
Secretary to Govt, Transport Dept,
Secretariat, Chennai-9.

2. The General Manager,
The Tamilnadu State Transport Corporation
Salem Division, Salem-7. ..Respondents in WP Nos. 25699 &
25700/06, 25447 to 25449/06, 25450 &
25451/06, 25520 to 25528/06
24805/06 to 24810/06.

1) The Govt. of Tamilnadu rep. by its
Secretary, Transport Dept,
Fort St. George, Chennai-9.

2) The Tamilnadu Govt. Transport Corporation
Coimbatore Ltd, rep. by its General Manager (Admn.)
Erode Region. .. Respondents in WP No. 26189/06

Tamil nadu State Transport Corporation Ltd,
rep. by its Managing Director,
Chennimalai Road, Erode. .. Respondent in WP NO.34862/06 to
34864/06, 34892/06

1) The State of Tamilnadu rep. by its
Secretary to Govt, Transport Department,
Secretariat, Chennai-9.

2) The General Manager,
Tamil Nadu State Transport Corporation,
Kumbakonam Ltd, Tiruchy Division,
Tiruchy. .. Respondents in WP NO. 29269/06 &
29270/06

Tamil Nadu State Transport Corporation Ltd.,
rep. by its Managing Director,
Coimbatore Division-II, Erode,
Erode District. .. Respondent in WP NO.45076/06,
45077, 45118 to 45120, 45396,
45397, 45422/06,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Metropolitan Transport Corporation Ltd.,
rep. by its Managing Director,
Pallavan Salai, Chennai-2. .. Respondent in WP No.33427/06,
34825/06

The State of Tamilnadu rep. by its
Secretary to Govt, Transport Dept,
Secretariat, Chennai-9. .. 1st Respondent in WP No. 39292/06,

27849/06, 30332, 34833, 24723,
41278, 23559, 27081, 27082, 41290
38216, 45062, 45081, 40363, 24285,
28015 to 28023/06, 45060, 43040,
43041, 35412, 42523, 46245, 45459
and 47719/06.

.. 2nd Respondent in WP No. 39363/06

The General Manager,
Metropolitan Transport Corporation
ltd, (Chennai), Chennai-2... 2nd Respondent in WP No. 39292/06,
27849/06,30332, 34833, 43040,
43041, 42523

Tamil Nadu State Transport Corporation
Ltd, rep. by its managing Director
Coimbatore, Division II, Erode,
Erode District. .. 2nd Respondent in WP No. 35412/06

The General Manager,
Metropolitan Transport Corporation
Ltd., Pallavan Illam, Pallavan Salai,
Chennai-2. .. 2nd Respondent in WP No. 24723/06,
41278/06

The Metropolitan Transport Corporation
rep. by its General Manager (Admn)
Chennai-2. .. 2nd Respondent in WP No. 24285/06

The General Manager
Tamil Nadu State Transport Corportion Ltd,
Coimbatore Division, Coimbatore-43.
.. 2nd Respondent in WP No. 23559/06
47719/06

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

The General manager, Tamilnadu State
Transport Corporation (Salem)
Dharmapuri Division, Salem-7... 2nd Respondent in WP No. 28015/06
to 28023/06

The General Manager,
Tamil Nadu State Transport Corporation,
(Coimbatore Division-II) Ltd.
Chennimalai Road, Erode. .. 2nd Respondent in WP No. 27081/06
& 27082/06 , 38216

The General Manager,
Tamilnadu State Transport Corporation
(Kumbakonam Division-I) Ltd,
Kumbakonam - 612 001. .. 2nd Respondent in WP No.
45062/06, 45081, 46245

The Tamilnadu State Transport Corporation
rep. by its Managing Director, Salem
.. 1st Respondent in WP No. 39363/06

Tamilnadu Transport Corportion ltd,
Formerly Known as Jeeva Transport
Corporation Ltd, rep. by its
Managing Director, Coimbatore
Division-II, Chennimalai, Erode DT.. 2nd Respondent in WP No.
40363/06

Tamilnadu State Transport Corporation
Ltd, rep. by its Managing Director,
Kumbakonam Division, Periyamilaguparai,
Tiruchy District. .. 2nd Respondent in WP No. 45060

WEB COPY

Kovai Arasu Pokkuvarathu OOzhiyar
Sangam, rep.by its General Secretary
No.109, Park St, Coimbatore - 641 009.

.. 3rd Respondent in WP No.
(R3 impleaaded as per order of this 23559/06
Court dt. 1.11.06 and made in
MP 5/06 in WP No. 23559/06)

https://hcservices.ecourts.gov.in/hcservices/

The General Manager, Tamilnadu STate
Transport Corporation Ltd,
Madras Division, Chennai-2. .. 3rd Respondent in WP No.45043/06

The General Manager, Tamilnadu State
Transport Corporation Ltd,
Coimbatore Division-II,
Erode, Erode District. .. 3rd Respondent in WP No. 35412/06

The Managing Director,
Tamilnadu State Transport Corporation
Coimbatore Division(2),
Mettupalayam Road, Coimbatore. .. Respondent in WP No. 45039/06, 45040/06

The General manager,
Tamilnadu State Transport Corporation ltd,
madurai Division-III, Nagercoil,
Kanyakumari Dist. .. 3rd Respondent in WP No. 24975/06

The Assistant Manager,
Tamilnadu State Transport Corporation Ltd,
Coimbatore Division, Coimbatore-43... 2nd Respondent in WP No. 41290/06

The Managing Director
Tamilnadu State Transport Corporation Ltd,
Pallavan House, Chennai-2. .. 2nd Respondent in WP No. 45043/06

1. The Governemnt of Tamilnadu
rep by its secretary
transport
Department, Fort St. George,
Chennai-9.

2. The General Manager (Admn)
Metropolitan Transport Corporation
(Chennai) Ltd., Chennai-2 ... Respondents in W.P.30687/06

1. The Government of Tamilnadu
rep by its secretary

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Transport Department, Fort St. George,
Chennai-9.

2. The General Manager (Admn)
Metropolitan Transport Corporation
(Chennai) Ltd., Chennai-2 ... Respondents in W.P.30688/06

Prayers in all WPs:-

Petitions filed under Article 226 of the Constitution of India to issue a writ of certiorarified Mandamus calling for the records pertaining to the impugned G.O.Ms. No. 41 dated 13.7.2006 issued by the 1st Respondent herein, quash the same and consequently direct the respective respondents herein to permit the petitioner to join duty forthwith in pursuance to the appointment orders issued between 25.2.06 & 28.2.2006 (WP.Nos.25167 to 25169/06). 27849/06, 24723 to 24725/06.

Petitions filed under Article 226 of the Constitution of India to issue a writ of certiorarified Mandamus calling for the records pertaining to the impugned G.O.Ms. No. 41 dated 13.7.2006 issued by the 1st Respondent herein, quash the same and consequently direct the respective respondents herein to permit the petitioner to join duty forthwith in pursuance to the appointment orders issued between order dated 25.2.2006 in W.P.Nos. 25007 to 25009/06, 39292/06, 34833, 23559, 43040, 43041, 42523, and 47719/06.

calling for the records relating to the impugned G.O.Ms. No.41 dated 13.7.2006 issued by the first respondent herein and consequential order No.53/062928/A4/AGV POKA/05 dated 26.7.2006 and quash the same and consequently direct the respondent herein to permit the petitioner to join the duty in pursuance of the appointment letter dated 25.2.2006 WP.34700/06.

calling for the records pertaining to the impugned G.O.Ms. No.41 dated 13.7.2006 issued by the first respondent herein quash the same and consequently direct the respondents herein to permit the petitioner to join the duty forthwith in pursuance to the appointment order dated 28.2.2006 (WP.No.25520/06 to 25528/06, 24806, 24808 and 24809/06 38216, 45062, 45081, 46245 and 25387/06).

To issue a writ of certiorarified mandamus calling for the records and quash G.O.Ms. 41 Transport (C1) Dept dated 21.7.2005 in so far as restricts the benefits of the G.O to appointments made in 1997 alone. (WP.No.39363/06)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

calling for the records of the first respondent made in G.O.Ms. No. 41 Transport (C1) Dept dated 13.7.2006 and the impugned order of cancellation issued by the 2nd Respondent in the impugned memo.No.8097A/P2/Papi/Tha.A Poka (KO) ema/06 dated 21.7.2006 and quash these orders and direct the 2nd respondent herein to give posting to the petitioner WP.No.26189/06.

To issue a writ of certiorarified mandamus calling for the records of the 1st respondent made in G.O.Ms.No.41 Transport (C1) Dept dated 13.7.2006 and quash the same and direct the 2nd Respondent herein to give posting to the petitioner in accordance with the appointment order issued him under Memo.No.26330/Papi/Po7/Mapoka/2005 dated 25.2.2006 (WP.No.24285/06)

calling for the records pertaining to the impugned G.O.Ms. No.41 dated 13.7.2006 issued by the first re33spondent herein quash the same and consequently direct the respondents herein to permit the petitioner to join the duty forthwith in post of Driver and conductor pursuant to the selection procedure WP.Nos.25699 & 25700/06.

To issue a writ of certiorari to call for the records in connection with Para 3 of the G.O.Ms.No.41 dated 13.7.2006 and quash the same WP.No.24975/06

calling for the records pertaining to the impugned G.O.Ms. No.41 dated 13.7.2006 issued by the first respondent herein quash the same and consequently directing the respondents herein to permit the petitioner to join the duty forthwith in pursuance to the appointment order dated 27.2.2006. WP.Nos.29269/06 30332/06. and 29270/06.

To issue a writ of mandamus directing the respondent to re employ the petitioner as Driver existing vacancies as per section 25-H of ID Act and GO.41, Transport Dept dated 13.7.2006 award costs in (WP.Nos.34805 to 34811/05 34818 to 34821/06, 34877, 34880, 34889,/06

To issue a writ of mandamus directing the respondent to re employ the petitioner as Driver and Conductor existing vacancies as per section 25-H of ID Act and GO.41, Transport Dept dated 13.7.2006 award costs 34816/06 and 34822, 34223, 34892, 34896/06, 34862 to 34864 and 34872 to 34876, 34878, 34879, 34881, 34887, 34888, 34890, 34891, 34893 to 34895 34897/06)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To issue a writ of certiorarified Mandamus calling for the records of the 2nd Respondent in proceedings No. BA3/RSI/6739/Tha.A. PO Ka/Da Puri/06 dated 24.7.2006 issued pursuant to G.O.Ms.41 dated 13.7.2006 and quash the same and consequently direct the respondents to permit the petitioner to join duty forthwith in pursuance to the appointment order 28.2.2006 (Wp.No.28015/06 to 28023/06)

To issue a writ of Mandamus directing the respondent to give preference to the petitioner in the employment as conductor in the 2nd respondent Corporation in compliance of Section 25H of the Industrial Disputes Act orders passed in WA.No. 2985/2003 etc Batch dated 8.12.2005 and G.O.Ms. No. 41 Transport Dept Dated 13.7.2006 before appointing new persons either by fresh recruitment or otherwise in the respondent Corporation (Wp.Nop.45060.06, 45076, 45077, 45118 to 45120, 45396 45397, 45222/06.

To issue a writ of Mandamus directing the respondents to provide re employment to the petitioner as conductor inthe 2nd respondent corporation without reference to the age limit (WP.No.35412/06)

To issue a writ of Mandamus directing the respondent to offer re employment as Driver to the members 25H of the Industrial Dispates Act 1947 (WP.No.33427/06)

To issue a writ of Mandamus directing the respondent to offer re employment as Conductor to the members 25H of the Industrial Dispates Act 1947 . (W.P.34825/06)

calling for the records of the first respondent in relation to G.O.Ms. No. 41, Transport (C1) Dept dated 13.7.2006 and quash the para 3 of the said Govt order in so far as the petitioner is concerned and issue a consequential direction to the responsnt to re employ the petitioner as Driver in the respondent corporation before resorting to the appointment by way of direct recruitment as per the direction given by this Court in WP.No. 37727/05 by the order dated 9.12.2005 with service and monetary benefits (WP.No. 40363/06)

To issue a writ of Mandamus directing the respondent herein to consider the representation dated 13.11.2006 for re instatement of the petitioner in service as conductor in the respondent corporation in accordance with the ratio laid down by the Division Bench of this court in WA.Nos.1294 to 1299/97 dated 8.12.97 with in the period that may be stipulated by this court (WP.No.45039/06, 45040/06)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

WP.Nos.39516 to 39519/06:-

To issue a writ order of specifically writ in the nature of writ of certiorarified mandamus calling for the records pertaining to the impugned order G.O.Ms. No.41 dated 13.7.2006 issued by the first respondent and consequential order passed by the 3rd respondent in his proceedings Pa.No.8097A/B2/Pa.Pee.1/TNSTC (Ko) E.Ma/2006, dated 21.7.2006 herein quash the same and consequently direct the respective respondents herein to permit the petitioner to join duty forthwith in pursuance to the appointment orders issued on 27.2.2006.

To issue a writ in the nature of a Writ of certiorarified Mandamus or any other appropriate writ, direction or order calling for the records of the 1st respondent made in G.O.Ms. No.41 Transport (C1) Dept, and the impugned order of cancellation issued by the 2nd respondent in the impugned memo.No.26047/Papi(Po)7mapoka/2005 dated 26.7.2006 and quash these orders and direct the 2nd respondent herein to give posting to the petitioner (WP.No.26188/06, 26192, 26193, 26196 to 26199/06.

to issue a Writ of Certiorarified Mandamus or any ther appropriate wirt, order of direction in the nature of a writ calling for the records pertaining to the impugned G.O.Ms.No.41 dated 13.07.2006 issued by the 1st respondent herein, quash the same and consequently, direct the respondents herein to permit the petitioner to join duty forthwith in pursuance to the appointment order dated 28.02.2006. WP.No.25447/06 to 25449/06, 25450 & 25451/06.

calling for the records of the 1st respondent in G.O.Ms.No.41 Transport (c1) Department dated 13.07.2006 and the impugned order of cancellation issued by the 2nd respondent in the impugned memo No.8097A/P2/Pap1/Tha A Poka(Ko) ema/2006 dated 21.07.2006 and quash these orders and direct the 2nd respondent herein to give posting to the petitioner. WP.No.26189/06.

Issue a Writ of Certiorari calling for the records of the 2nd respondent in proceedings No.Pa.No.8097A/P2/Pa p1/Tha.Aa.Po.Ka(Ko) E.Ma/06 dated 21.07.2006 quash the same (WP.No.27081/06 & 27082/06)

to issue a writ in the nature of a Writ of Certiorari Mandumus or any other appropriate Writ, direction or order calling for the records of the 1st respondent made in G.O.Ms.No.41 Transport (C1) Department dated 13.07.2006 and the impugned order of cancellation issued by the 2nd respondent in the impugned memo.No.26330/papi(po)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7/mapoka/2005 dated 26.07.2006 and quash these orders and direct the 2nd respondent herein to give posting to the petitioner. WP.No.26190/06, 26191, 26194, 26195/06.

to issue a Writ of Certiorarified Mandamus, or any other appropriate Writ or order or direction in the nature of a Writ, calling for the records pertaining to the impugned G.O.Ms.No.41, Transport (C1) Department, dated 13.07.2006 issued by the first respondent herein and the consequential order in Proceedings No.26047/Pa.P.(Po)7/MTC/2006 dated 26.07.2006, issued by the second respondent and quash the same and consequently direct the respondents herein to permit the petitioner to join duty forthwith in pursuance to the appointment order dated 27.02.2006. WP.No.41278/06.

to issue a Writ of Certiorarified Mandamus or any other appropriate writ, or order or direction, more in the nature of Writ by calling for the records, pertaining to the order in G.O.Ms.No.41 Transport (C1) Department dated 13.07.2006, issued by the 1st respondent herein and the consequential order No.26330/PA.P.(Po) 1/MAPOKA/2005 dated 26.07.2006 issued by the 3rd respondent herein and quash the same as not valid and direct the respondents 2 and 3 to permit this petitioner to join the conductor post as per the appointment order dated 25.02.2006. WP.No.45043/06.

to issue a Writ of Certiorari to call for the records leading to issue the impugned order vide No.26330/Pa.(Po)1/MAPOKA/2005 dated 26.07.2006 passed by the 2nd respondent herein quash the same. WP.No.41290/06.

To issue a Writ of Certiorari calling for the records of the 2nd respondent in proceedings No.E1/31753/Tha.A.Po.Ka(salem) 2006 dated 24.07.2006 quash the same. WP.No.24805/06, 24807, 24810/06.

to issue a Writ in the nature of Certiorarified Mandamus after calling for the records relating to G.O.41, Transport Department dated 13.07.2006 from the first respondent and the order in Memo No.26047/Pa Pi/(Po)7/MTC/2005 dated 26.07.2006 from the second respondent and to quash that portion of the order in G.O.41, Transport Department dated 13.07.2006 directing the 2nd respondent to withdraw the appointment order issued to the petitioners pursuant to the completion of the selection process and the consequential orders in Memo No.26047/Pa Pi(Po)7/MTC/2005/dated 26.07.2006 of the 2nd respondent, withdrawing appointment order issued to the petitioners and consequently to direct the respondents to issue suitable posting orders to the petitioners. W.P.33517/06)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

to issue a Writ of Mandamus or any other appropriate writ or order or direction, directing the Respondents to implement the G.O.Ms.No.41 dated 13.7.2006 passed by the 1st Respondent and appoint the petitioners for the post of Conductors/Drivers within a stipulated period. WP.No.45459/06)

to issue appropriate writs orders or Directions and in particular issue a writ in the nature of Certiorarified Mandmus after calling for the records relating to G.O.41 Transport Department dated13.7.06 from the first respondent and the order in Memo No.26047/Papi (Po)7/MTC/2005 dated 26.7.2006 from the second respondent and to quash that portion of the order in G.O.41, Transport Department dated 13.7.2006 directing the 2nd respondent to withdraw the appointemnt order issued to the petitioners pursuant to the completion of the selection process and the consequential orders in Memo No.26047/PaPi(Po)7/MTC/2005/dated 26.7.2006 of the 2nd respondent with drawing appointment orders issued to the petitioners and consequently to direct the respondents to issue suitable posting order to the petitioners. (W.P.30687/06)

to issue appropriate writs orders or Directions and in particular issue a writ in the nature of Certiorarified Mandmus after calling for the records relating to G.O.41 Transport Department dated 13.7.06 from the first respondent and the order in Memo No.26330/PaPi (Po)1/MTC/2005 dated 26.7.2006 from the second respondent and to quash that portion of the order in G.O.41, Transport Department dated 13.7.2006 directing the 2nd respondent to withdraw the appointment order issued to the petitioners pursuant to the completion of the selection process and the consequential orders in Memo No.26330/PaPi(Po)1/MTC/2005/dated 26.7.2006 of the 2nd respondent with drawing appointment orders issued to the petitioners and consequently to direct the respondents to issue suitable posting order to the petitioners.(W.P.30688/06)

WEB COPY

For Petitioners
in W.P.No.34696/06 : Mr.I.David Singh

For Respondents : Mr.R.Viduthalai
Advocate General
Asst.by
Mr.G.Sankaran,Spl.G.P.

https://hcservices.ecourts.gov.in/hcservices/

O R D E R

In majority of the cases, in the present batch of writ petitions, the petitioners, who either claim to have been appointed, selected or proposed to be appointed, challenge the validity of G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 and for the consequential direction against the respondents to permit the petitioners to join duty forthwith either as Conductors or Drivers in the respondent Transport Corporations, pursuance to the orders earlier issued by the respective Transport Corporations. Those are the cases in W.P.Nos.26195, 26196, 26197, 26198, 26199, 26188, 26194, 26189, 26190, 26191, 26192, 26193, 29269, 29270, 39292, 27849, 30332, 34833, 39516, 39517, 39518, 39519, 34700, 25520, 25521, 25522, 25523, 25524, 25525, 25526, 25527, 25528, 24723, 24724, 24725, 41278, 23559, 25167, 25168, 25169, 25387, 25699, 25700, 25007, 25008, 25009, 25447, 25448, 25449, 25450, 25451, 33517, 24285, 30687, 30688, 28015, 28016, 28017, 28018, 28019, 28020, 28021, 28022, 28023 of 2006 and in W.P.Nos.38216, 45043, 45062, 45081, 47719, 42523, 43040, 43041 of 2006.

2. Some petitioners have filed writ petitions challenging cancellation of the selection order issued to them by the respective Transport Corporations. Even though there are no reference in these cases about the impugned G.O.Ms.41, admittedly, the cancellation is pursuant to the said impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006. They are in W.P.Nos.27081, 27082, 41290, 24805, 24806, 24807, 24808, 24809, 24810 of 2006.

3. There are some other cases, wherein the writ petitioners challenge the G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006, only in respect of clause 3 of the said G.O., which stipulate that preference in employment to be given under the said G.O., only in respect of persons appointed from 1997 onwards and terminated later. They are the cases in W.P.Nos.26239, 30326, 39363, 34696, 24975, 40363 of 2006.

4. The remaining, are the cases, where the petitioners have filed writ petitions to implement the G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 and also in the face of Section 25(H) of the Industrial Disputes Act, and provide re-employment and also based on the Division Bench judgement of this Court in Writ Appeal Nos.1294 to 1299 of 1997, apart from Writ Appeal No.2985 of 2000. They are cases in W.P.Nos.45459, 34805, 34806, 34807, 34808, 34809,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

34810, 34811, 34816, 34817, 34818, 34819, 34820, 34821, 34822, 34823, 34862, 34863, 34864, 34872, 34873, 34874, 34875, 34876, 34877, 34878, 34879, 34880, 34881, 34887, 34888, 34889, 34890, 34891, 34892, 34893, 34894, 34895, 34896, 34897, 45060, 45076, 45077, 45118, 45119, 45120, 45396, 45397, 45422, 45039, 45040 of 2006.

5. The other cases, namely, in W.P.Nos.35412, 33427, 34825 of 2006 are to implement Section 25(H) of the Industrial Disputes Act, in giving preference in respect of the re-employment of the retrenched employees.

6. Relating to the batch cases, challenging the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 Mr.N.R.Chandran learned Senior Counsel has made his submission, apart from Mr.Palani and Mr.Manojpandian and the other learned counsels have adopted the same. In respect of the persons who 9+have challenged the G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 only in respect of relating to clause 3, Ms.D.Nagasaila has made her submissions, apart from Mr.Gangadharan. In respect of the petitioners, who have supported the implementation of the G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006, Mr.N.G.R.Prasad, Ms.Vaigai and Mr.Hariparanthaman have made their submissions as adopted by the other learned counsels. The learned Advocate General has defended the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 on behalf of the respondents.

7. As I have stated earlier, in respect of the batch of writ petitioners, like the writ petitioner in W.P.No.23559 of 2006, the respective second respondent and in that case, it was the Tamil Nadu State Transport Corporation Ltd., Coimbatore Division, by the letter dated 25.02.2006, has stated that the second respondent proposed to give employment to the petitioner as Driver based on the sponsorship of the list by the respective Employment Exchange and the subsequent interview, in which the concerned petitioners have participated.

8. Apart from that the said orders also stipulate various conditions, namely, that the petitioner concerned should produce certificate, having passed in the 10th Standard. Further, he must produce the Heavy Motor Vehicle License, First Aid certificate and Public Service Batch. That apart, the candidate shall have the physical requirement of 160 cms. height and 48 Kgs. weight along with the certificate of physical fitness and hearing fitness issued by the Government Civil Assistant Surgeon and he must have 18 months experience in driving the heavy vehicles, having passed in the test conducted thereon and he must have completed 24 years and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

not crossed 40 years of age and in respect of the age and education qualification he should produce Transfer Certificate and Community Certificate. It also states in the last paragraph that if all the above conditions are satisfied "you will be appointed as a Driver".

9. In other cases of the batch, the respective orders issued by the Transport Corporations show that it is a provisional appointment and in some other cases it also states, as if the petitioner concerned was selected, apart from other cases, wherein it says that the concerned petitioners have been appointed. All these orders are invariably during February 2006 and the appointments were made as temporary and the candidates are directed to produce the certificates before the concerned officials.

10. It is the case of the petitioners in these cases that when accordingly, they went in person with records with a desire of joining duty, they were not allowed to join on the ground that the election process in respect of public election has been initiated and as per the directions of the Chief Electoral Officer, the appointments should not be made and it is the case of the petitioners that they are qualified and sponsored through Employment Exchange which is the due process and therefore, the candidates were directed to contact after the intimation from the respective second respondent. It was thereafter, the petitioners came to know that the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 was passed by the Government, directing the Managing Directors of all State Transport Corporations to withdraw the provisional appointment orders issued to the Drivers/Conductors, pursuant to G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005. The respective second respondents have also passed consequential orders, canceling the provisional selections.

11. The case of the petitioners is that by virtue of G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005, considering the fact that the shortage position of Drivers/Conductors in the State Transport undertakings has increased and the State Transport undertakings are in the category of essential services, the Government calculating on the said date that there are 1776 vacancies of Drivers and 586 vacancies of Conductors as on 30.04.2005, has directed, the lifting of ban on recruitment issued in G.O.Ms.No.27 (Finance) Department dated 21.01.2002 and permitting the Corporations to recruit 2000 Drivers and 700 Conductors of course based on certain conditions.

12. The Annexure to the said G.O. gives the vacancy positions in respect of Drivers and Conductors in the Transport undertakings

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

which is as follows:

Allotment of Drivers and Conductors to State Transport Undertakings

Name of the Corporations	No.of Drivers	No.of Conductors
1. Metropolitan Transport Corporation Limited, Chennai-2.	230	190
2. State Express Transport Corporation Limited, Chennai-2.	Nil	90
3. Tamil Nadu State Transport Corporation (VPM) Limited, villupuram	64	NIL
4. Tamil Nadu State Transport Corporation (CBE) Coimbatore	554	110
5. Tamil Nadu State Transport Corporation (Salem) Ltd., Salem	430	110
6. Tamil Nadu State Transport Corporation (KBM) Ltd., Kumbakonam	377	140
7. Tamil Nadu State Transport Corporation (Madurai) Ltd., Madurai	345	60

13. It was based on the said decision of the Government in G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005, the respondent Corporations have called for eligible candidates from Employment Exchange and accordingly, the Employment Exchange has sponsored the petitioners name, who are eligible and appointment orders were issued in February 2006, as I have stated above, namely, that in some cases stating proposed appointment, in some cases stating provisional appointment and in some other cases stating, as if the persons are appointed etc., and thereafter, the election process came into effect and then impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006, was passed and the consequential orders of cancellation. The said orders of cancellation of appointments are challenged on the ground that the provisions of Section 25(F) and Chapter V (A) of the Industrial Disputes Act, were not followed, apart from the other contention that the cancellation is due to political reasons.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

14. It is also the case of the petitioners that the second respondent after giving the appointment order cannot suomoto cancel the same. Apart from that it is the case of the petitioners that the cancellation is only to accommodate a particular group of people. When large number of vacancies are available, as it is evident from the communication of the Government and also the statement of the Hon'ble Minister, who is stated to have admitted that there are 8000 vacancies in the Transport Corporations, the cancellation is only arbitrary.

15. Apart from that it is the case of the petitioners that it is the exploitation by the Government, who is expected to be a model employer. It is also the case of the petitioners that as far as the petitioners are concerned, the selection process is already over and it is only to take charge in the post, the time was postponed, since the election process has intervened and therefore, after election process the respondent ought to have given effect to the appointment orders. Since it is the matter relating to administrative action resulting in civil consequences, as per the judgement of the Hon'ble Apex Court the petitioners are entitled for a notice on principles of natural justice, which has not been followed.

16. The first respondent has filed the counter affidavit. According to the first respondent, there are 7 State Transport undertakings functioning in the state of Tamil Nadu. While the first respondent admits that pursuant to the lifting on ban of recruitment as per G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005 and the respective Corporations have selected candidates for appointment, obtaining the list from Employment Exchange and in some cases provisional appointment orders have been sent to the selected candidates, inasmuch as the model code of conduct of Election Commission came into force, in the mean time, during the general elections to the State Legislative Assembly in 2006, the Election Commission has ordered, the selected candidates should not be allowed to join duty before completion of election process and therefore, appointments were not made.

17. It is the specific case of the first respondent that from 1997 on wards, appointments to the post of 4553 Drivers and 4061 Conductors were made by the Transport Corporations on daily wages basis either on sponsorship from the Employment Exchange or without referring to the Employment Exchange or on compassionate ground and their services were no longer required subsequently. Around 1685 retrenched persons filed writ petitions and in the batch of cases in the judgement dated 08.12.2005, there was a direction to provide

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

re-employment to 952 retrenched persons as per Section 25(H) of the Industrial Disputes Act, on preference, stating that in respect of the persons who have completed 240 days in the respective Corporations and satisfied with the other conditions, they shall be given preference in appointment under Section 25(H) of the said Act, to the new entrance. In respect of the persons who have not completed 240 days, they are directed to be re-employed and the question of their regularization was only after completion of 240 days and subject to the fulfilment of the other conditions. The said order was subsequently clarified on 07.04.2006, stating that such persons given preference, shall satisfy regarding physical fitness and eye fitness and driving skill test in respect of Drivers. Following the said Division Bench order, subsequently, persons who were retrenched have approached and the Division Bench has issued similar orders. It was after the election process was over, the Government for the purpose making appointment of Drivers and Conductors to which, there was acute shortage, has issued the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006, in Clause 4 of the said G.O., stating that preference will be given to the persons retrenched from service and obtained orders from the High Court for re-employment in terms of Section 25(H) of the Act, apart from giving preference to similar persons who approached the court and cases are still under consideration. Further, it stated that preference shall be given to the persons who are similarly situated but, who have not approached the court but approached the Managing Directors seeking re-employment and that while giving such preference as per the clarification of this Court dated 07.04.2006 in W.P.No.38097 of 2005 etc., both the physical fitness, eye fitness and driving skill test are to be satisfied. Since the respondents had to give preference to the candidates as per the direction of this Court, it warranted the State Transport Corporations to cancel the provisional selection intimation and accordingly, the provisional appointment orders already issued were cancelled.

18. It is also the case of the first respondent that the orders issued in February 2006, are not appointment orders but they were all provisional in nature subject to certain conditions. While it is true that due to intervention of the assembly election, the petitioners were directed to come after receipt of information, it remains a fact that after election, the respondents have never given any intimation for verification of the certificates.

19. It is also the case of the first respondent that it was as per the direction of this Court, the second respondent has to provide re-employment to about 897 Drivers and it was in those circumstances, the second respondent was unable to provide

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

employment to the petitioners in the near future and that has resulted in the cancellation of the provisional orders. It is also denied that 8000 vacancies have arisen in the Transport Corporation Department. It is also stated that withdrawal of the provisional appointment does not in any way deny the right of the petitioners to be sponsored again by the Employment Exchange and it is specifically stated that the names of the petitioners are kept alive in the register of the Employment Exchange, until the second respondent resorts to fresh recruitment through Employment Exchange.

20. According to the respondents there was no violation of the provision of the Industrial Disputes Act, inasmuch as the petitioners were not appointed at all and therefore, there was no question of application of Section 25(F) and Chapter V (A) of the Industrial Disputes Act. The question of giving opportunity to the petitioners does not arise because there was no appointment order issued and in any event, the petitioners have no right to claim to be appointed.

21. In respect of the writ petitions filed challenging the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 clause 3, the writ petitioner in W.P.No.39363 of 2006 which is the Anna Transport Corporation Indian National Trade Union Congress Tozhilalar Nala Sangam states that when it was in 1997, there was mass retrenchment of Drivers and Conductors in the various Transport Corporations including the erstwhile Anna Transport Corporation which has been subsequently renamed as Tamil Nadu State Transport Corporation and actually, 239 Drivers and Conductors were retrenched in June 1996 in violation of Section 25(S) and 25(H) of the Industrial Disputes Act. It was in those circumstances, the petitioner Union filed W.P.No.114 of 1997 and W.P.No.3745 of 1997 in respect of 84 workers and 239 workers respectively, challenging the retrenchment as violative of Section 25(F) and 25(H) of the Industrial Disputes Act. The writ petitions were allowed on 29.04.1997 by directing the respondents to offer re-employment to retrenched workmen before recruiting new persons through Employment Exchange. When the respondent Corporation has filed appeals in Writ Appeal No.143 of 1997 and 144 of 1997 the same was dismissed by the Division Bench of this Court on 08.12.1997. The Division Bench while dismissing the Writ Appeals, has directed the respondent Corporation, by directing the management to verify the number of days worked by each one of the employees and in all those cases, wherein employees worked for more than 240 days in a 12 calendar month and Section 25(F) was not complied with, such workers were directed to be reinstated with back-wages and continuity of services within 2 months. Further, it was directed

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

that in respect of persons who have not completed 240 days, they should be given preferential treatment in re-employment under Section 25(H) of the Act, and that process was directed to be completed in a period of 3 months time. It was also specifically stated that those who were in employment should not be disturbed until the above exercise was completed. In spite of the specific direction, the workers were not given employment and in fact, contempt applications were filed and thereafter, the respondents Corporation has preferred S.L.P.No.12956 to 12958 of 1998 before the Supreme Court.

22. It is the case of the petitioner Union that the Hon'ble Supreme Court has directed, the workers to be present before the Transport Corporation on 17 to 19th September 1998, for verification and however, there has been some untoward incidents by the management and the management ultimately reported the Hon'ble Supreme Court that out of 259 workers only 35 workers were provided work to which the Hon'ble Supreme Court was not inclined to give such direction and it was at that stage the S.L.Ps. were withdrawn by the management on 19.03.1999. In spite of withdrawal, the management which should have implemented the order in the Writ Appeal No.1019 of 1997, has not implemented even as on today. In fact the petitioner Union has filed contempt petition.

23. The Division Bench has closed the contempt application, after the Labour Commissioner has identified as per the direction that 85 workers are entitled under Section 25(H) of the Industrial Disputes Act. The case of the petitioner Union is that after the passing of G.O.Ms.No.57 dated 21.07.2005, lifting the ban on recruitment, out of 2000 vacancies of Drivers, there are 430 vacancies of Drivers in the Salem Division and out of 700 Conductors in the State, 110 Conductor vacancies are available in Salem Division. When the process of sponsorship through Employment Exchange pursuant to the said G.O.Ms.No.57 was commenced, the petitioner Union filed W.P.No.31461 of 2005, for a direction to implement the order in Writ Appeal No.1017 to 1019 of 1997 dated 08.12.1997, by appointing the workers on preferential basis under Section 25(H) of the Industrial Disputes Act. The said writ petition was allowed on 08.12.2005 by the Division Bench of this Court and it was thereafter, the letters of appointment were given to the workers, represented by the petitioner Union on condition of satisfying the age limit, educational qualification, etc.

24. It was in those circumstances, on the petitioners filing the clarification petition in W.P.M.P.No.7582 of 2006 in Writ Petition No.31461 of 2005, the Division Bench has clarified that it is physical fitness and driving skill test that should be satisfied

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

and not other requirements. It is in such circumstances, the G.O.Ms.No.41, dated 13.07.2006 came to be issued, deciding to implement the above said order of the Division Bench of this Court, however, referring that this is applicable only to the workers appointed after 1997, again ignoring the claim of the petitioner Union, whose workers have joined prior to 1997.

25. It is the case of the petitioner Union that after G.O.Ms.No.41 came into existence, about 170 retrenched workers were given appointment orders, who were appointed after 1997. It is also stated that as against the order dated 08.12.2005 passed in W.P.No.31461 of 2006 by the Division Bench of this court, an S.L.P. filed by the management, is admitted on 28.08.2006 and the same is pending. The case of the petitioner Union is that there is no rational basis to restrict the benefits of G.O.Ms.No.41 in respect of Clause 3, only relating to the persons appointed and retrenched after 1997, especially in the circumstance that the members of the petitioner Union have been fighting in these years and they were appointed before 1997 and retrenched.

26. It is the case of those petitioners, who have fled writ of mandamus for direction to implement the G.O.Ms.No.41 that inasmuch as the petitioners were employed under the second respondent Transport Corporation and they were retrenched without assigning any reasons and without following the provisions of the Industrial Disputes Act, and also the direction given by the Division Bench in Writ Appeal No.1194 to 1199 of 1997 and pursuant to the G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006, when the petitioners' name have been forwarded by the respective Employment Exchange and they were also called for interview, they were not given any appointment so far and therefore, they are entitled for preferential treatment as per the Section 25(H) of the Act, apart from G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 itself, which categorically assures that even in respect of persons, who have been retrenched but have not approached the court, they will be given preference, however, subject to two conditions of physical fitness and eye fitness and driving skill test.

27. Mr.N.R.Chandran learned Senior Counsel appearing for the petitioner in W.P.No.23559 of 2006 which has been adopted by all other learned counsels, in respect of the similar writ petitions, while challenging the validity of the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 specifically refers to Clause 6 whereby, the orders issued by the second respondent Transport Corporation have been cancelled and also would submit that in respect of these writ petitioners, their appointments have

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

been done by following the procedure established by law, namely, they have been sponsored through Employment Exchange and all of them have confirmed to the required qualifications for the post of Drivers/Conductors in the second respondent Corporations.

28. According to the learned Senior Counsel, the order issued by the second respondent in February 2006, offering to provide employment as a Driver or Conductor to the petitioners, is an appointment order, since the same is not for a casual appointment and the petitioners are not sought to be appointed as casual labourers, inasmuch as it is the admitted case of the respondent as seen in G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005 itself that there has been in existence vacancies to the extent of 1776 in respect of Drivers and 586 in respect of Conductors as on 30.04.2005, and it was pursuant to the said vacancy position, notified by the Government in G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005, the appointment orders were issued by the second respondent and therefore, it cannot be lightly taken as provisional selection for the reason that the appointments are made to the regular post. According to him, calling upon the petitioners pursuant to the appointment orders dated 25.02.2006 to produce various certificates and that itself will not make the appointment as provisional. It is in this regard, the learned counsel would submit that even under the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 in paragraph No.2, it is clearly stated that when once appointment orders are sent to the selected candidates, the term provisional appointments stated therein cannot take away their right to claim the post, especially in the circumstance that the appointments are made to the regular post. Therefore, the word provisional appointment is only a misconception and the petitioners are not merely selectees but they are appointees in the legal sense of the term and therefore, the civil consequences have occurred to them. They were not allowed to join duty which is only consequential to the appointment orders issued, not by fault on part of the petitioners, but due to the intervention of election process and according to the learned Senior Counsel, even Election Commission has recognized the appointment but only directed the appointees to join after the election process is over.

29. The conditions mentioned in the orders by the second respondent dated 25.02.2006 to produce the certificates were already produced and it was only for verification purpose, the same was called for and that cannot make the appointment provisional. He would insist that as far as these petitioners are concerned, the process of selection has been followed, namely, they have been sponsored through Employment Exchange in respect of regular

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

vacancies, which are available as it is admitted in G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005 and therefore, it should be treated as an appointment and not merely a selection and there is no right on the part of the second respondent to cancel the same, since the appointment cannot be termed as either illegal, irregular or improper. He would also submit that mere inability on the part of the second respondent cannot be the ground to taint the order as a provisional selection.

30. He would also rely upon the judgement of the Hon'ble Apex Court reported AIR 1991 SC 309 to support his contention that when such appointments are cancelled, it requires an opportunity. He would also rely upon an order passed by me, while sitting in the Madurai Bench of Madras High Court, dated 14.03.2006 in W.P.No.2397, 2401 of 2006, wherein I have given direction that when pursuant to such orders, they have approached the second respondent, the petitioners were not allowed to join because of the process of election as directed by the Chief Electoral Officer and therefore, a direction was given by this Court stating that in view of the said circumstances, the petitioner's appointment order shall be given effect after the election process is over. Therefore, according to the learned Senior Counsel, the present G.O., which cancels the appointment is against the order of the court and also against the order of the Election Commission itself.

31. In respect of the preference sought to be given to the retrenched employees as per Section 25(H) of the Industrial Disputes Act, the learned Senior Counsel would submit that even though as far as the candidates directed by the court to give preference under Section 25(H) of the Act, he may not have much quarrel, nevertheless, the learned Senior Counsel would submit that when earlier the workers were working as casual employees and were not appointed in the existing vacancies as that of the present appointment order of the petitioners and therefore, they cannot be termed as regular employees and especially in the circumstance that some of them were sponsored through Employment Exchange and others were not. By using the provisions under Section 25(H) of the Industrial Disputes Act, their original appointments which were not proper or regular or by following the procedure established by law, cannot be regularized.

32. On the other hand, by giving preferential treatment to a person who was not appointed by due process of law and who has been subsequently retrenched, against persons like that of the petitioners herein, who have been appointed to regular vacancies by following the procedure established by law, will only amount to acting against the principles of law as such and will jeopardize

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the interest of the regularly appointed persons like that of the petitioners. According to him, Clause 3 of the G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 will only be actually invalid because it in effect seeks to validate an improper and illegal appointment of a person not qualified and appointments not by following procedures established by law.

33. The learned Senior Counsel would also take exception to the counter affidavit which has been filed without even giving specific particulars about how many candidates have been appointed as per the direction of the court under Section 25(H) of the Industrial Disputes Act, and actually what are the vacancies available as on date and therefore, the counter affidavit suffers from want of necessary particulars as such.

34. According to the learned Senior Counsel, Section 25(H) of the Industrial Disputes Act cannot confer an automatic right of re-employment. He would also submit that in the absence of the counter filed by the second respondent who has given the appointment orders and on the face of the counter of the first respondent, comprising no material particulars regarding the vacancy position and as to how many persons have been accommodated, and in the absence of the exact figure, it should be taken that the pleading is not complete, especially in the circumstance that no valid reason is given for the purpose of withdrawing the appointments.

35. According to the learned Senior Counsel, while as per the G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006, Clause 4, the first sub-clause stands in a different position in respect of second and third clauses, wherein a person has gone to court and no order has been passed and persons who have not gone to court. A reference to the Division Bench order in W.P.No.2985 of 2003 etc. batch dated 08.12.2005 applies only to cases where the workmen who have retrenched and who have come to court in respect of whom assurance were given on behalf of the Government.

36. He would also submit that in respect of persons who have not completed 240 days, they can only be given preference in re-employment in the same category, which they were holding, especially, when originally they were holding the casual labourer post. Now, taking advantage of the order of the Division Bench, they cannot be posted to a regular employment and that is not the sprit of Section 25(H) of the Act. He would submit that even in respect of the persons who have worked less than 240 days, the benefit of the Division Bench order can be given only to the persons who have come to court and that cannot be granted to the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

persons who have not come to the court or otherwise that will encourage the backdoor entry, especially, when originally they were not appointed by following due process of law and their appointments were casual in nature and by applying Section 25(H) of the Industrial Disputes Act, they were seeking to enter into the regular employment. He would also rely upon the assurance stated to have been given by the Government as referred by the Division Bench in the said judgement in respect of the candidates entitled for the benefit under Section 25(H) of the Industrial Disputes Act, can be made applicable only in respect of the persons who have come to the court and such assurance cannot be for the purpose of giving a regular appointment to the persons who have not even completed 240 days. He would also contend that as per the Tamil Nadu Industrial Disputes Rule, 1958, especially Rule 62, the respondents have a duty to maintain the seniority list and in case of retrenchment, the same has to be followed on the occurrence of vacancies by following the procedure under Rule 63. He would also specifically refer to the proviso to Rule 63, which says that obligation of the employer to give notice to the retrenched employees for re-employment, does not arise in cases of temporary and casual workers, which according to him means that the re-employment is not a matter of right for the purpose of casual workers. Therefore, according to him Clause 2 and Clause 4 of the G.O.Ms.No.41 (4) Transport (C1) Department, dated 13.07.2006 is vague and without any particulars.

37. He would submit that on the other hand, the petitioners in these cases are different from those who are claiming right under Section 25(H) of the Industrial Disputes Act, not only in the sense that the persons claiming right under Section 25(H) of the Industrial Disputes Act, were not appointed through Employment Exchange and they have not having educational qualification as required and they are not even produced the age proof and the same was dispensed with and therefore, third Clause of G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 cannot be applied regarding those irregularly appointed persons.

38. In this regard, the learned Senior Counsel would rely upon the judgement of the Hon'ble Apex Court rendered in A.Umarani Vs. Registrar, Co-operative Societies and others reported in 2004 (7) SCC 112 to substantiate his contention that in cases of appointments, where a reference by the Employment Exchange is given a go bye, to such persons the benefits under second and third clause of G.O.Ms.No.41(4) Transport (C1) Department, dated 13.07.2006 cannot be conferred. He would also rely upon the subsequent judgement of the Hon'ble Apex Court reported in Secretary, State of Karnataka and others Vs. Umadevi and others

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

reported 2006(4) SCC 1 to contend that in respect of public employment, if the process of appointment is not adhered to and the appointments are made irregularly without reference to the proper appointment procedure and keeping out those who are qualified to apply for the post concerned and deprive them of an opportunity to compete the post as illegal.

39. He would also submit that the qualification prescribed by the Transport Department in respect of the vacancies of Drivers and Conductors should be equated to the rules, which are framed as per Article 309 of the Constitution India regarding the public employment. According to him it cannot be said that the post of Drivers and Conductors in the Transport Corporation are not public employment. He would also further submit that inasmuch as it is seen that the second respondent has not prepared or not maintained the records as required under the Tamil Nadu Industrial Disputes Rules 1958 and the seniority list under Rule 62, there is no question of application of Section 25(H) of the Industrial Disputes Act, since the Section 25(H) presupposes the condition of preserving that records.

40. The learned Senior Counsel also would rely upon the judgement of the Hon'ble Supreme Court reported in 2002(2) SCC 507 (State of Hariyana Vs. State of Punjab and another) to substantiate his contention that the cancellation of the order cannot be passed merely based on the change of Government. He would specifically rely upon the portion of the judgement of the Honb'le Apex Court at page No.538 which runs as follows:

> "What really bothers us most is the functioning of the political parties, who assume power to do whatever that suits them and whatever would catch the vote bank. They forget for a moment that the Constitution conceives of a Government to be manned by the representatives of the people, who get themselves elected in an election. The decisions taken at the governmental level should not be so easily nullified by a change of Government and by some other political party assuming power, particularly when such a decision affects some other state and the interest of the nation as a whole. It cannot be disputed that so far as the policy is concerned, a political party assuming power is entitled to engraft the political philosophy behind the party, since that must be held to be the will of the people. But in the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at, which does not involve any political philosophy, the succeeding Government must be

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

held duty-bound to continue and carry on the unfinished job rather than putting a stop to the same."

41. The learned Senior Counsel also relies upon another judgement of this Court rendered in B.Kamaraj Vs. The Director of Technical Education, Guindy, Chennai-04 and others reported in 2004 WLR 271 to show that even though it is true that the selected candidates do not have right to the post, after an order of appointment is issued, there cannot be an arbitratory decision on the part of the Government, since for not appointing the selected persons, a proper reason must be given and therefore, the non giving of such a reason will affect the legitimate expectation without any reasonable basis.

42. He would also rely upon another judgement of the Hon'ble Supreme Court reported in 2006(7) SCC 350 in Union Bank of India and others Vs. M.T.Latheesh wherein the Hon'ble Apex Court has heavily come down against the compassionate appointment, which reduces considerably the fresh employment affecting the unemployed youth.

43. He would also submit that the very fact that the petitioners have undergone selection process and subsequent orders have been passed by the second respondent shows that the intention of the second respondent is that the petitioners are appointed and therefore, the wordings whether proposed to be appointed or provisionally appointed, all those things are immaterial. According to him, even though it is stated to be an offer, inasmuch as the petitioners have accepted the offer, the appointment is completed and therefore, if such order is cancelled, it must be for some reason, since there is a legitimate expectation on the part of such persons who are appointed. The state has not given any reason for such withdrawal. Whether a person is selectee or appointee a right has been conferred. He would also contend that if the contentions by some of the writ petitioners that the cut off year 1997 given in G.O.Ms.No.41(3) Transport (C1) Department, dated 13.07.2006 is wrong, then the entire G.O. should go. This was the submission made by the learned Senior Counsel Mr.N.R.Chandran in response to the reply of the learned Advocate General.

44. Mr.Sreeramulu has adopted his arguments. He would also submit that since the post of the Driver or Conductor is being a public appointment made by the respondents who are definitely coming under the definition 'state' and under Article 12 of the Constitution of India, the re-employment offered to such persons who were not regularly appointed but were appointed on casual basis or daily wages basis without qualification and without sponsored by

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the Employment Exchange and therefore, those appointments should be held invalid and in such cases question of applicability of Section 25(H) in respect of those candidates does not arise. He would rely upon the judgement of the Hon'ble Apex Court in Accounts Officers (A&I) A.P.SRTC and others Vs. P.Chandra Sekar Rao and others reported in 2006(7) SCC 488 by referring to paragraph 6 of the judgement which runs as follows:

> "6. The High Court did not have the benefit of considering the recent decisions of this Court including the Constitution Bench judgement in Secy.,State of Karnataka Vs. Umadevi(3). In the said decision it has categorically been held that the appointments made on a contract basis or on daily wages and in violation of the statutory rules or the Rules framed under the proviso appended to Article 309 of the Constitution of India, being void ab initio and thus nullity and hence the question of regularising their services would not arise."

He would also reiterate his stand that the order of the Division Bench earlier passed based on the undertaking given on behalf of the respondents cannot be treated as a precedent.

45. Mr.Palani learned counsel appearing for the petitioner in W.P.No.24285 of 2006 would submit that the petitioner was appointed as Conductor by the order of the second respondent dated 25.02.2006. He would refer to the terms of the wordings in the said order wherein it is stated that the petitioner is appointed. According to him by supporting the contention of the learned Senior Counsel Mr.N.R.Chandran, since the appointment of the petitioner has been made subsequent to G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005 in the substantial vacancies, the appointment can never be treated as a casual vacancy, especially in the circumstance that the due process of selection has been followed and the petitioner's name has been forwarded by the Employment Exchange. According to the learned counsel, the Government has no right to issue the impugned order at all. By applying the said impugned order, various orders issued in the light of Section 25(H) of the Industrial Disputes Act, giving preference to those employees who were not employed through Employment Exchange and therefore, the appointments become irregular and such appointments are sought to be made illegally.

46. He would also submit forcefully that Section 25(H) of the Industrial Disputes Act cannot apply for entry of the employees under backdoor method, especially in the respondents organization which is a public sector undertaking. He would also submit that by quoting the judgement of the Hon'ble Apex Court reported in 2004(7) SCC 112 (A.Umarani Vs. Registrar, Co-operative Societies and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

others) that regularization cannot be a mode of recruitment by the state and appointments made in violation of mandatory provisions of statues, ignoring the minimum educational qualifications and other essential qualifications will be wholly illegal. He would specifically refer to paragraph No.39 of the judgement of the Hon'ble Apex Court, which runs as follows:

> "39. Regularising, in our considered opinion, is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act or the Rules framed thereunder. It is also now well settled that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation. (See State of H.P.Vs.Suresh Kumar Verma).
>
> 40. It is equally well settled that those who come by back door should go through that door. (See State of U.P. Vs. U.P.State Law Officers Assn.)"

47. Therefore according to him, the earlier appointments made in the respondent Transport Corporations were not by following the due process and appointments were made on casual basis and daily wages basis, not based on the the existence of sanctioned strength and therefore, those appointments cannot be treated as valid appointments at all and to such persons who were retrenched, the question of applicability Section 25(H) does not arise. He would also rely upon the judgement of the Hon'ble Apex Court reported in 2006(7) SCC 161 rendered in Principal Mahar Chand Polytechnic and another Vs. Anu Lamba and others to contend that when once the appointments were not issued based on the vacancies existed or after notifying through Employment Exchange or no advertisement issued before appointment to enable eligible candidates to file applications then such appointments should be held invalid and also relying upon the judgement of the Constitution Bench of the Hon'ble Supreme Court in Umadevi case reported in 2006(4) SCC 1, with the specific reference to the following wordings of the Hon'ble Apex Court in paragraph No.48 at Page No.40 which runs as follows:

> "There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Article 14 and 16 of the Constitution. The right to be treated equally with

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Article 14 and 16 of the Constitution are therefore overruled."

48. According to the learned counsel, even the order passed by this Court in preference on re-employment is a nullity, by virtue of the judgement of the Hon'ble Apex Court as stated above, since by conferring the benefits under Section 25(H) of the Act, the public employments made contrary to rules and irregularly are sought to be regularized. The learned counsel also would refer to the judgement of the Division Bench in Writ Appeal No.2985 of 2003 etc., batch dated 08.12.2005 to state that the said judgement covers two sets of people; one is that the person who have been sponsored by Employment Exchange and another relates to the persons who were not sponsored through Employment Exchange. In that regard he also would refer to another Division Bench judgement of this Court in Writ Appeal No.1294 to 1299 of 1997 dated 08.12.1997, wherein the Division Bench has held that even in respect of the persons who were not appointed through Employment Exchange must be offered the benefit under Section 25(H) of the Act.

49. He would submit that a reading of the relevant rules under the Industrial Disputes Rules, which contemplate the maintenance of the seniority list of workmen and also re-employment based on the seniority shows that the benefit of re-employment under Section 25(H) of the Act applies, only in respect of those employees who are regularly appointed and does not apply in respect of appointments which are not made in accordance with law and procedure. He would also submit that the reason given by the respondents for canceling the regular appointment made to the petitioners as that of the direction given by the court is not valid. He would also rely upon the various judgements of the Hon'ble Supreme Court reported in AIR 1967 SC 1071, 1972(1) SCC 409 and 1979(4) SCC 507 to substantiate his contention that illegal and irregular appointments cannot give any right to such appointees. He would also reiterate that the post of Drivers and Conductors in the respondent's organisation being the public employment, by applying the judgement of the Hon'ble Apex Court, the appointments made in respect of the casual employees earlier should be only treated as illegal and such illegal appointment cannot be sought to be regularized by invoking Section 25(H) of the Industrial Disputes Act.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

50. He would also place reliance on the judgement of the Hon'ble Apex Court reported in 2006(5) SCC 173 that in respect of public employment, appointments must be in open market and the appointments effected without advertisement in the newspapers or without resorting to the sponsorship by Employment Exchange can only be treated as illegal appointments. He would also submit that the stand taken by the respondents that appointment to these persons who were appointed earlier on casual basis without reference to Employment Exchange and who were retrenched, were given appointment subsequent to the Division Bench direction, is only against the judgement of the Hon'ble Supreme Court. He would also finally submit that the vacancies that are existed as on today are much more and even assuming that the said persons were re-employed either as per the direction of the court or after retrenchment, the writ petitioners can also be accommodated.

51. Mr.P.H.Manojpandian would submit placing reliance upon the judgement of the Hon'ble Supreme Court reported in 1994(6) SCC 154 that inasmuch as the petitioners are qualified and the order was only to verify the certificates, in the absence of any fault on the part of the petitioners, they should not be put to loss, since the legitimate expectation is affected by the conduct of the respondents. To support his contention he also would rely upon the judgement of the Hon'ble Supreme Court reported in 2003(11) SCC 584.

52. Mr.R.T.Duraisamy learned counsel appearing for the petitioner while adopting the arguments of Mr.N.R.Chandran would also submit that in respect of the petitioner, he was appointed in the year 1998 through Employment Exchange and terminated, thereafter called for interview now, after the G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005 and he was given re-employment.

53. Ms.Nagaseela learned counsel appearing for the writ petitioner in W.P.No.39363 of 2006 challenging the G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 Clause 3 in so far it is restricts the persons to be benefited under Section 25(H) of the Industrial Disputes Act, only in relation to those who were appointed after 1997 as adopted by other learned counsels appearing in similar writ petitions, would narrate as to how many rounds of litigations, the said union had filed, till the Hon'ble Supreme Court and ultimately. After withdrawal of the S.L.P. in the Hon'ble Supreme Court, the respondents were bound to follow the judgement of the Division Bench in Writ Appeal No.1019 of 1997, after a prolonged battle G.O.Ms.No.41(3) Transport (C1) Department,

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

dated 13.07.2006 came to be passed, however, stating that the same is applicable only in respect of persons appointed after 1997 which has no reasonable or rational basis whatsoever. It is her contention that even though earlier some persons were not appointed through Employment Exchange and the appointment was not made by the public advertisement, it is not correct to say that they were not qualified. According to her, they were all workmen as per Section 2(S) of the Industrial Disputes Act, and there is no distinction between the regular appointment and adhoc appointment. The benefit given under Section 25(H) of the Industrial Disputes Act, after insertion of Chapter V(A) on 24.10.1953, is conferred without any distinction between the adhoc workmen and regular employee.

54. On the other hand, the benefits are conferred for re-employment on preferential basis as a mandatory requirement, since the term "shall" is used. She would also submit that inasmuch as Section 25(J)(1) of the Act, gives over riding effect to Chapter V (A), as per the law, the preferential treatment to the employees, irrespective of their being adhoc or regular is a mandatory and the same is a statutory right. She would also submit that the Division Bench of this Court in the judgement rendered in Writ Appeal No.2985 of 2003 etc., batch dated 08.12.2005 has in fact referred to various judgements of the Hon'ble Apex Court as well as the other High Courts, to come to a conclusion that there is no distinction between the temporary employment and permanent employment in respect of the powers conferred under Section 25(H) of the Industrial Disputes Act, apart from the fact that the 25(H) imposes a mandatory duty.

55. She would also submit that Section 25(H) of the Industrial Disputes Act, has nothing to do with the regularization, it only offers only the preferential right in respect of re-employment of the retrenched employees. She would also submit that what was referred to by the Hon'ble Supreme Court in Umarani case and Umadevi case, are the case of illegal appointments of the persons who were not even qualified to hold the post and in such circumstances, the Hon'ble Apex Court has come to a conclusion that when many qualified unemployed persons are standing in the queue, the unqualified persons cannot be made usurp their positions. She would also rely upon the various judgements of the various High Courts also, as confirmed by the Hon'ble Apex Court to show that under the Industrial Disputes Act, the concept of casual labourer and permanent labourer are alien.

56. Mr.Gangadharan learned counsel appearing for the petitioner in W.P.No.24975 of 2006 while adopting the argument of the Ms.D.Nagasaila would also submit that there cannot be a

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

discrimination between persons appointed after 1997 and before 1997 and there is no rational nexus between the provision and the object sought to be achieved. The said contention has also been followed by Mr.Mohandass, learned counsel appearing for the petitioner in W.P.No.34825 of 2006.

57. Mr.Hariparanthaman learned counsel in W.P.No.30687 and 30688 of 2006 etc., batch appearing for the workers in the Metro Transport Corporation, while opposing the argument of the learned Senior Counsel Mr.N.R.Chandran would submit that the Hon'ble Supreme Court, while dealing with the judgement in Umarani case as well as Umadevi case had no occasion to discuss about either the concept of workmen under Section 2(S) of the Industrial Disputes Act, or to decide about the implication for Section 25(H) of the Industrial Disputes Act. According to him, Section 25(F) of the Industrial Disputes Act, is dealing with the payment of compensation in respect of persons who have been retrenched illegally and in that process certain number of days are stated to have been worked by workmen to enable them to get compensation, whereas in respect of Section 25(H) of the Industrial Disputes Act, it speaks about the right of re-employment irrespective of the number of days. He would rely upon the Hon'ble Apex Court reported in 1996(2) LLJ 820 to substantiate his contention that as far as the right under Section 25(H) of the Industrial Disputes Act, is concerned, the word retrenchment does not mean that such persons should always be eligible for the retrenchment compensation under Section 25(F) of the Industrial Disputes Act. It means that even if he is not eligible for the compensation, he will be entitled for the preferential right of re-employment under Section 25(H) of the Act. Therefore, there is no distinction of permanent and temporary employee as far as the rights under Section 25(H) of the Industrial Disputes Act, are concerned.

58. According to him, Section 25(H) contemplates two categories of workmen saying that the workmen who is eligible for re-employment under Section 25(H) and workmen who have not rendered 240 days of required service as per Section 25(F) and are not eligible for compensation under the said provisions of Section 25 (F) of the Act. Therefore, according to the learned counsel, Section 25(H) does not contemplate the number of days to be worked. The judgement of the Hon'ble Supreme Court rendered in 1996(2) LLJ 820 has been followed by the Division Bench in 2006(1) LLN 257 (Writ Appeal No.22985 of 2003 etc., dated 08.12.2005).

59. The learned counsel would submit that the petitioners who have been earlier retrenched are not claiming regularization. They are only claiming a preferential treatment in re-employment and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

inasmuch as Chapter V(A) of the Industrial Disputes Act, is having over riding effect, certainly the persons who were retrenched earlier, whether they were appointed on adhoc or regular basis, are entitled for the preemption. The learned counsel also would rely upon the judgement of the Hon'ble Apex Court reported in 1990(2) LLJ 70 to show that the term retrenchment means it is the termination by the employer of the services of the workmen for any reason whatsoever, except those that are specifically excluded in the section namely, Section 2(oo).

60. He would also take me to the fact of the said case wherein, the respondent workmen were terminated on the ground that their original appointment was not valid, since the Chairman has no power to appoint and in those circumstances, the Hon'ble Apex Court has held as stated above. The same was the judgement rendered by the Hon'ble Apex Court subsequently, in 1993(2) LLJ 696 (SC). According to the learned counsel, the law under the Industrial Disputes Act, is very well settled, especially, in respect of retrenchment, right under Section 25(H) of the Industrial Disputes Act, and retrenchment compensation under Section 25(F) of the Industrial Disputes Act, and that cannot be stated to have been unsettled by the subsequent judgement of the Hon'ble Apex Court in Umadevi's case, wherein the provisions of the Industrial Disputes Act, were never under consideration by the Hon'ble Apex Court at all and those were relating to the rules framed under Article 309 of the Constitution of India, in respect of public employment.

61. The learned counsel would also distinguish the judgement relating to Apprentice who are not treated as workmen and therefore, they are not entitled as a matter of right for employment, as it is found in the judgement of the Hon'ble Apex Court in 1995(2) SCC 1. He would also submit that even in respect of the project workers as held by the Hon'ble Supreme Court in 1985 (2) LLJ 406 (Supreme Court) (Inter Pal Yadav and others etc. Vs. Union of India and others etc), the re-employment is not a matter of right even though, the court has directed the Railway to prepare a list of project casual labour and as and when they start absorbing, to give employment on the seniority basis among the persons who were removed. Likewise, he would also refer to the judgement of the Hon'ble Supreme Court reported 1995(2) LLN 1129 (SC) and also 1997(3) LLN 67(SC) wherein the Hon'ble Supreme Court has directed the Management to maintain a register in respect of seasonal employees so that as and when season arises they shall be given a preferential right of employment.

62. He would also rely upon the judgement of the Hon'ble Supreme Court reported in 2001(7) SCC 1 (Steel Authority of India

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Ltd., and others Vs. National Union Waterfront Workers and others) and state that even in respect of Steel Authority of India Ltd., which is also a public employment, the Hon'ble Apex Court has decided the issue under the Industrial Disputes Act, and therefore, according to the learned counsel Mr.Hariparanthaman, even if it is a public employment, if they are governed by the labour legislations, it is the Industrial Disputes Act, which will prevail and inasmuch as the judgements reported by the Hon'ble Supreme Court in Umadevi and Umarani case has not dealt with anything about the Industrial Disputes Act, it cannot be said that the rights given under Section 25(H) of the Industrial Disputes Act, have been either taken away or restricted, for, under the labour legislation, there was no distinction between the casual worker and permanent worker.

63. He would also submit that in respect of the persons who were earlier retrenched, it is not as if they were without qualification. It may be true that in some cases, there was no advertisement and Employment Exchange list was not called for, but nevertheless, it remains the fact that they were all the qualified persons and it is only those persons who were now appointed as per the provisions of Section 25(H) of the Industrial Disputes Act, as it is conferred under G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006.

64. Mr.N.G.R.Prasad learned counsel appearing for the petitioner in W.P.No.426239 of 2006 submits the very fact that under G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 clause 3, it is stated that the appointment will be made in respect of persons appointed after 1997 shows that there are permanent vacancies. That was the case wherein, the writ petitioner claimed in earlier W.P.No.16292 of 1998 for regularization of service as per the clause 12(3) settlement entered under the Industrial Disputes Act, between the trade union and the management. This Court while disposing of the writ petition and based on the decision given in Writ Appeal No.1294 to 1299 of 1997 dated 08.12.1997 has directed the respondent Corporation to dispose of the representation and subsequently when a contempt application was filed in Contempt Petition No.307 of 2002 by order dated 12.07.2002, it was made clear that the direction of Court dated 10.11.1998 has been complied with in terms of the order of the Division Bench and recording the same, the contempt petition came to be closed. It was in those circumstances, by order dated 01.08.2001, the Tamil Nadu State Transport Corporation, Madurai Division-3, Nagercoil has informed the petitioner that as and when re-employment is to be effected, the petitioner will be given preference on the basis of the seniority list relating to the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

temporary employees, maintained by the respondents. Therefore, according to the learned counsel, the petitioner has to be given employment, without distinction as to whether the appointment was after 1997 or before 1997. This argument, the learned counsel has advanced in addition to the argument advanced by various counsels that there was no rational nexus for fixing 1997 as a date of appointment. In that case, the petitioner was appointed and retrenched before 1997.

65. He would also submit that the First Bench of this Court in the batch of cases in Writ Appeal No.1294 to 1299 of 1997 dated 08.12.1997, in paragraph 3, stated as follows:

> "3. After hearing learned counsel for the parties, we are of the view that since the workers were taken in service, it is immaterial whether one was taken through the Employment Exchange or directly. Under the Industrial law, which is a welfare legislation, a right has been conferred under the Act on worker to have a preference for the employment in case of fresh recruitment over the ones who have not earlier served the Employer. Consequently, the appellant - Corporation will offer the job to the retrenched employees complying with Section 25-H of the Act, irrespective of the fact whether the worker was employed through the Employment Exchange or directly, unless the Authority comes to the conclusion that the employment to the worker was provided malafide or for some ulterior consideration. This exercise may be completed within three months from today."

66. He would also rely upon the judgement of the Hon'ble Supreme Court reported in 2006(6) SCC 310 (Mineral Exploration Corporation Employees Union Vs. Mineral Exploration Corporation Ltd., and another) wherein the Hon'ble Apex Court has held that judgement reported in 2006(4) SCC 1 in Umadevi's case, making distinction between the irregularly appointed employees and illegally appointed employees and regularize them, has restricted in paragraph 15 to 17 of the said judgement as one time measure and also directing that the skilled employees have been employed for many years, doing the work of permanent nature.

67. According to the learned counsel, the said public employment relates to employment wherein, Article 309 to be followed and as far as the transport employees in the respondent Corporation are concerned, there is no rules framed under Article 309 of the Constitution of India. It was in those circumstances, according the learned counsel for the petitioner, the Division Bench has correctly held that the offering of employment under

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Section 25(H) of the Industrial Disputes Act, was the irrespective of the fact whether the workers were employed through the Employment Exchange, are directly. Therefore according to him, the decisions rendered in Umadevi case and Umarani case by the Hon'ble Apex Court has no application.

68. Ms.Vaigai in addition to the arguments advanced as stated above, would submit stating that the requirement as per G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005 was the driving test and efficiency test, etc. The learned counsel apart relying on the judgement of the Hon'ble Supreme Court reported in 2006(6) SCC 310 as stated above, would also rely upon the subsequent order of the Division Bench passed in W.P.M.P.No.7523 of 2006 in W.P.No.38097 of 2005 etc. batch dated 17.04.2006 wherein while clarifying the earlier orders passed in Writ Appeal No.2585 of 2003 etc. batch dated 08.12.2005, especially relating to paragraph 34 (III)(A), wherein the term "other conditions if any" have been used, the Division Bench has clarified stating that the petitioners therein have in fact satisfied the required conditions prevailing on the relevant date namely 1996 to 1999 and therefore, made it clear that they are also to be considered, subject to the satisfaction of physical fitness and eye fitness, driving skill test, etc, while granting re-employment as per the said order dated 09.12.2005.

69. Therefore according to her, even a person who was appointed before 1997 when they were confirmed to the said qualifications they will be eligible for preferential treatment on re-employment under Section 25(H) of the Industrial Disputes Act. While referring to the judgement of the Hon'ble Supreme Court in Umadevi's case reported in 2006(4) SCC 1, the learned counsel would submit that, that was the case of writ of mandamus filed by the temporary employees, appointed on daily wages or casual basis, directing praying that they should be made permanent in the appropriate post. In that case, the Hon'ble Supreme Court, while referring to the earlier judgements in R.N.Nanjundappa Vs. T.Thimmiah reported in 1972(1) SCC 409 and also in B.N.Nagarajan Vs. State of Karnataka in 1979(4) SCC 507 has differentiated the illegal appointments and irregular appointments, has not only found that the Hon'ble Supreme Court cannot direct the temporary employees to be made permanent or regular, since those were, cases where, the appointments were made under the scheme and in such circumstances, giving such direction will only amount to perpetuating illegality, based on Dharwarad decision reported in 1990(2) SCC 396. Therefore according to her, the facts of the case involved in the Hon'ble Apex Court relates to a case wherein, the rules framed under Article 309 of the Constitution of India was

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

involved. According to the learned counsel, the appointments sought to be made are to the sanctioned post and especially, after the clarification made by the Division Bench by making applicable, the direction earlier given dated 08.12.2005 to persons appointed from 1996 to 1999 and also the present process of appointment is by virtue of G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005. There is no question of denying the rights to these workers under Section 25(H) of the Industrial Disputes Act.

70. She would also submit that when the purpose of G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005 was that there were permanent vacancies to the extent of 1776 in respect of Drivers and 586 in respect of Conductors as on 30.04.2005, the Tamil Nadu Industrial Disputes Rule, 1958, Rule 63(1)(iv) is contrary to the same. She would rely upon the judgement of the Hon'ble Supreme Court reported in 2005(6) SCC 751, to show that it was only in cases where the status of permanency cannot be claimed when there was no post, whereas in the present case a reading of G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005 shows that there are posts available.

71. In support of her contention under Section 25(H) of the Industrial Disputes Act, she would rely upon the various judgements of the Hon'ble Apex Court reported in 1985(2) SCC 648, 1987(1) SCC 677, 2004(13) SCC 638 apart from 2006(3) SCC 297. She would also submit that the persons who are selected pursuant to G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005 cannot complain about the validity or otherwise of G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 and therefore, according to her Section 25(H) of the Industrial Disputes Act, gives right not only to persons who approached the court but also to other persons who are eligible.

72. Per contra, Mr.R.Viduthalai learned Advocate General would submit that the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 is perfectly valid in law. He would submit that a reference to the Industrial Disputes Act would show that in cases where there is retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, Section 25(F) of the Industrial Disputes Act, contemplate certain procedure to be followed failure of which will result in payment of retrenchment compensation. According to him Section 25(H) of the Industrial Disputes Act, stands in different footing and the same is independent of Section 25(F) of the Industrial Disputes Act. There is no requirement of working for 240 days as far as applicability of Section 25(H) of the Industrial Disputes Act. The very fact that Section 25(J)(1) of the Industrial Disputes Act give over

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

riding effect to these Chapter V (A), shows that the intention under Section 25(H) of the Industrial Disputes Act is to give better benefits to the workers.

73. He would also submit that Section 25(S) of the Act also makes Section 25(H) including the other provisions in Chapter V(A) are applicable to the industrial establishments to which Chapter V (B) is applied. According to the learned Advocate General, the definition of workmen under Section 2(S) is so liberal that it includes even an Apprentice. He would submit that under the Tamil Nadu Industrial Disputes Rule and especially Rule 62(2), a duty is imposed on the employer to prepare a seniority list of the retrenched workers during the preceding 24 months and it is in respect of them, the preference shall be given while re-employment as it is seen under Rule 63. Therefore, according to him, if the persons like that of the petitioners who are challenging the validity of G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 were appointed in violation of Section 25(H) of the Industrial Disputes Act, namely when the persons who were already working and retrenched are available and are entitled for re-employment under Section 25(H) of the Industrial Disputes Act, as a matter of statutory right, necessarily the petitioners who are now challenging the validity of G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 cannot claim better right than those who are already entitled for a statutory right under Section 25(H) of the Act.

74. The contention of the learned Advocate General in this regard is that first of all without going into the merits of the case as to whether, these persons who are now challenging the validity of G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 were appointed or selected or whether they have any substantial right to hold the post, the order issued to them in February 2006 are patently contrary to the provisions of Section 25 (H) of the Act, since by taking away the powers given to the retrenched employees, already worked in the respondent Corporations, the above said appointment orders have been issued in February 2006. Inasmuch as persons who were retrenched within 24 months before have got a statutory right of re-employment on preference basis as per the Tamil Nadu Industrial Disputes Rules, especially, under Rule 62(2) read with Rule 63, the persons who were retrenched within two years from the date of the proposal for re-employment are having a mandatory right by way of statutory compulsion to get a preferential treatment in the case of re-employment. Of course, he would also submit that in respect of the persons, who were retrenched beyond 24 months, even though there was no right of re-employment as a matter of compulsion as per the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

rules, the appointment of those persons should be treated as compassionate appointment and such appointment should be discretionary. Therefore, by adopting the criteria of 24 months, the impugned G.O.Ms.No.41 Transport (C1) Department dated 13.07.2006 has fixed the year of appointment of persons as 1997 to have the benefit because according to him from 1999 to 2004 there was a ban on recruitment and consequently there was no recruitment process from 1999 to 2004, the criteria of application of 24 months time entitles the Government from fixing the date as 1997 as a curtail date for providing a right of preference under Section 25 (H) of the Industrial Disputes Act and therefore according to him, the statutory right conferred under Section 25(H) has been established under the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 which is perfectly in accordance with law. According to the learned Advocate General, such persons appointed in 2005 have no right, since those appointments were against the provisions of the Industrial Disputes Act.

75. That apart, the learned Advocate General would proceed to deal with the cases of persons who have challenged the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006, while admitting that the orders issued in February 2006 and the wordings were different in various Corporations, while in some Corporations the word "appointed" is used and in some Corporations the word "proposed to be appointed" is used and some other Corporations the word "provisional appointment" is used. According to the learned Advocate General, whatever may be the term used, apart from the fact that such orders are illegal as per the arguments stated by him supra, he would state that even assuming that a person is issued an appointment order even on merit basis such persons will not have a right to claim the post as a matter of right.

76. He would rely upon the judgement of the Hon'ble Supreme Court reported in AIR 1991 SC 1612 apart from 2001(6) SCC 380 to show that even the persons who are in the merit list have no right over the post. To substantiate his contention he would also rely upon some other judgements of the Hon'ble Apex Court reported in 2006(1) SCC 779, 2005(9) SCC 22. He would also quote another judgement of the Hon'ble Apex Court reported in 2006(3) SCC 330 to show that even in cases where appointment orders have been issued, subsequently it came to light that the said appointment orders were issued wrongly and the same was cancelled, the Hon'ble Supreme Court has held that such appointees have no manner of right over the post. According to the learned Advocate General, in the present case as stated above, even assuming that an appointment order has been issued in February 2006 to the persons who are now challenging the validity of G.O.Ms.No.41 Transport (C1) Department

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

dated 13.07.2006, such orders are patently against Section 25(H) of the Industrial Disputes Act and therefore, having realized that by mistake the orders have been issued, under the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006, under clause 6 such orders were withdrawn, which is perfectly in order and the petitioners therein have no substantial right to claim the post.

77. He would also rely upon the judgement of the Hon'ble Apex Court in 2003(10) SCC 144 to the effect that the orders issued in February 2006, in these cases were not merely irregular but they were illegal, since they were against the provisions of the Industrial Disputes Act.

78. The learned Advocate General would also submit that the Division Bench in M.Sekaran Vs. General Manager, Tamil Nadu State Transport Corporation, Coimbatore Division-II, Erode reported in 2006(1) LLN 257 has clearly held that rights given under Section 25 (H) of the Industrial Disputes Act, is a substantial right and a reading of Section 25(H) of the Industrial Disputes Act makes it amply clear that it imposes a statutory duty on the employer to give an opportunity to the retrenched workmen to offer themselves for re-employment and in view of the said categoric finding of the Division Bench of this Court dated 08.12.2005, there was a statutory obligation on the part of the respondent Corporation to provide job to large number of persons who were retrenched earlier and it was only after giving them the preferential right, the remaining vacancies can be filled up by the subsequent appointments and the Hon'ble Division Bench has also dealt with G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005 which was passed as early as 21.07.2005 quoting that substantial number of regular vacancies are available. It was in those circumstances, according to the learned Advocate General, after the Election Commission has imposed a restriction in May 2005, after the election process was over on 13.07.2006 the present impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 came to be passed, rightly giving preference to all the workers already employed in the respondent Corporation and retrenched, not only based on the judgement of the Division Bench of this Court but also based on the substantive obligation imposed on the respondent Corporation under Section 25 (H) of the Industrial Disputes Act. It was only incidentally when the statutory obligation was to be implemented, under G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 Clause 6, the earlier order passed in February 2006 grossly in violation of the provisions of Section 25(H) of the Industrial Disputes Act, came to be cancelled on the basis that they were not merely irregular but were basically illegal. It was also the case of the learned

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Advocate General that the decision taken under the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 is not due to the change of Government but it was based on the legal principle.

79. That apart, the learned Advocate General would also submit that no one of the candidates who were given orders in February 2006 and who are now challenging the validity of G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 have any right accrued to them, apart from the fact that there was no appointment and such orders given to them were illegal and void ab initio, since the same cannot have a legal basis to stand inasmuch as they were against Section 25(H) of the Industrial Disputes Act, and that no one of them have ever taken charge.

80. He would also submit that the earlier First Bench of this Court in Writ Appeal No. 1017 to 1019 of 1997 batch dated 08.12.1997, has also clearly held that 25(H) has to be followed even in cases whether such employees earlier retrenched were recruited through Employment Exchange or otherwise and inasmuch as the said judgement has become final, since the S.L.P. filed against the said judgement has been withdrawn, the present point raised in respect of Employment Exchange is not available to the petitioners herein. He would also submit that in addition to the order of the Division Bench dated 08.12.2005, the same has been subsequently, clarified by the Division Bench in W.P.M.P.No.7523 of 2006 in W.P.No.38097 of 2005 etc. batch dated 17.04.2006.

81. While meeting the contention raised by Mr.N.R.Chandran learned Senior Counsel that the persons who were appointed and whose appointments have been cancelled as per the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 were not given even notice before cancellation, the learned Advocate General would submit that for the reason stated above namely that their appointments were totally illegal, there was no question of any notice to them. According to him giving notice to an illegally appointed persons will only become an useless formality and would contend placing reliance upon the useless formality theory as enunciated by the Hon'ble Apex Court in 1999(6) SCC 237, apart from the judgement reported in AIR 2000 SCC 2783. The learned Advocate General while meeting the contention of the learned Senior Counsel Mr.N.R.Chandran placing reliance on the judgement of the Hon'ble Apex Court reported in AIR 1991 SC 309 would submit that, that was the case wherein persons were validly appointed on the facts and when that was sought to be cancelled, the Hon'ble Apex Court has held that it requires notice.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

82. In this regard, the Advocate General would rely upon the judgement of the Hon'ble Apex Court reported in 2006(6) SCC 310 to distinguish the same to the effect that when persons who have employed even on temporary basis for many years and they were performing the duties of regular employees, the regularisation is the proper remedy, especially in the circumstances wherein the appointments were made in accordance with law. According to the learned Advocate General, the appointment of the persons who were made as Drivers and Conductors in the respondent Corporations and subsequently, retrenched and thereby entitled for the benefits under Section 25(H) of the Industrial Disputes Act, were qualified. According to him the very fact that they have worked for many years before their retrenchment shows that they cannot be termed as disqualified persons. In that regard he would rely upon the judgement of the Hon'ble Apex Court stated above namely in 2006(2) SCC 315 wherein the Hon'ble Apex Court has distinguished the judgement reported in 2006(4) SCC 1 (Umadevi's case) wherein the appointments were made irregularly and illegally. In the present case, according to the learned Advocate General, the appointments sought to be given under the impugned order pursuant to Section 25 (H) of the Industrial Disputes Act, is not given to the person who were illegally appointed.

83. On the other hand, those persons were performing the functions of Drivers and Conductors of the respondent Transport Corporations as that of any other Drivers and Conductors who have been appointed on regular basis and therefore, it cannot be said that their appointments were illegal. He would also submit that there was no question of legitimate expectation for the appointments stated to have been issued some times in February 2006 illegally and against Section 25(H) of the Industrial Disputes Act, which is sought to be cancelled by the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 within a short span of time on 13.07.2006 and therefore, there was no question of any right vested on those persons, especially, in the circumstance that no one of the persons have ever taken charge either as Drivers or Conductors.

84. While meeting the arguments regarding the legitimate expectation, the learned Advocate General would rely upon the judgement of the Hon'ble Supreme Court reported in 2003(5) SCC 437 to show that there cannot be a legitimate expectation against public interest. He would submit that the person claiming legitimate expectation must have their right founded on sanction of law. In the present case, appointments made against the provisions of Section 25(H) of the Industrial Disputes Act, in respect of the petitioners who were challenging the validity of G.O.Ms.No.41

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Transport (C1) Department, dated 13.07.2006 cannot be said to have the sanction of law. To Support his contention that the legitimate expectation must be founded on legal basis, the Advocate General also would rely upon the judgement reported in 2006(5) SCC 515.

85. The learned Advocate General while meeting the cut of date that the cut of date was made based on the provisions of the Tamil Industrial Disputes Rules, especially Rule 62 and 63, wherein the list of the persons retrenched with a period of two years are sought to be made and taking into consideration that from 1999 to 2004 there was no recruitment, the Government has rightly taken 1997 as a cut of date and therefore, it cannot be said that using 1997 as a cut of date cannot have the rational nexus to the object sought to be achieved. He would also submit that apart from the provisions Section 25(H) of the Industrial Disputes Act, the respondent Corporations are bound by the direction given by the Hon'ble Division Bench of this Court more than once and the same has become final in the sense that the S.L.P. filed against the judgement in the Hon'ble Supreme Court has been withdrawn. He would also submit that it is not as if the judgement of the Division Bench of this Court is in respect of particular individuals alone and it was the general direction and in fact, the direction was given by the Hon'ble Division Bench based on the statutory obligation of the respondent Corporation under Section 25 (H) of the Industrial Disputes Act. Therefore, according to the learned Advocate General, the benefit of the said Division Bench as well as Section 25(H) of the Industrial Disputes Act should be made applicable to all persons who are entitled as per the law.

86. He would also submit that apart from the fact that there wouldn't be any discrimination shown among the persons on re-employment under Section 25(H) of the Industrial Disputes Act, the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 makes it very clear about the procedures to be followed and the benefits have been given under Section 25(H) of the Industrial Disputes Act, not only to the persons who have filed the writ petitions, who approached this Court but also to all other persons.

87. In view of the same, the learned Advocate General would submit that the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 is well in accordance with law and the same cannot be questioned by the petitioners and prayed for the dismissal of the writ petitions challenging the validity or otherwise of any portions of the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006, whether it is Clause 3 or Clause 6. The learned Advocate General has also produced the details regarding the vacancy positions of State Transport Undertaking as follows:

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

SL.No.	Details	No.of persons
1	Retrenched employees from STU's in Tamil Nadu	5810
2	Number of persons re-employment	1040
3	Retrenched employees not re-employment given	4770
4	Available vacancies	6385
5	Employees retrenched coming under purview of G.O.Ms.No.41 dated:13.07.2006	5388
6	Retrenched employees covered by G.O.Ms.No.41 dated 13.07.2006	1040
7	Retrenched employees coming under purview of G.O.Ms.No.41 dated 13.07.2006 who have been not been re-employed till now	4348

88. I have heard the learned counsels for the petitioners as stated above and also the learned Advocate General and perused the entire records.

89. The crux of the issue involved in this batch of cases is about not only the validity or otherwise of the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006, but also it relates to applicability of Section 25(H) of the Industrial Disputes Act. Before going into the merits of the cases, I would like to trace out the various judgements of this Court in respect of the Transport Corporations relating to the issue involved in these cases. It was in a writ petition filed by Anna Transport Corporation Indian National Trade Union Congress Thozhilar Nala Sangam, Salem in W.P.No.114 of 1997 and other batch of cases, the petitioners therein have sought for a mandamus, directing the respondents the then Anna Transport Corporation to continue to employee the workmen. They were originally employed as temporary workers on casual basis and they approached the court for absorbing them in permanent vacancies on the ground that there were vacancies in the post of Drivers and Conductors in the Transport Corporations. While disposing of the said writ petitions, K.Govindarajan,J. has allowed the batch of cases in terms of paragraph 11 of the earlier judgement of this Court in Writ Petition Nos.10564 and 15957 of 1996 dated 12.12.1996 by S.M.Alimohammed,J. The said paragraph 11 which was passed relying

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

upon the judgement of the Hon'ble Apex court reported in 1996(7) SCC 201 runs as follows:

> "11. In view of the above ruling of the Supreme court whether the members of the petitioner Union completed 240 days in a year or not they are entitled to the benefit of the section 25(H) of the Industrial Disputes Act 1947 be considered by the respondent for re-employment by giving an opportunity to the retrenched workmen for re-employment and the retrenched workmen who offer for reemployment shall have preference over other persons and after exhausting the retrenched workmen, it is open to the respondent to request the Employment Exchange to sponsor the name of candidates and in addition the respondent shall call for the names by publication in the newspapers in compliance with the ruling of the Supreme Court in The excise superintendant. Malkapatnam Vs. K.B.H visweswara Rao (1996(7) Supreme Court, 201) As far as the candidates sponsored by the Employment Exchange and the candidates through advertisement are concerned, it is open to the respondents to select them on merits in accordance with law. It is open to the members of the petitioner union to apply to the concerned authorities, under Tamil Nadu industrial Establishments (conferment of permanent status to workmen) Act, 1981 to get the benefit under the Act. In view of the above, these writ petitions are ordered accordingly."

In that case, there was a direction to the respondent Corporations to take up the workers sponsored by the Employment Exchange and also through advertisement concerned with a direction to select on merits and in accordance with law. It was as against the said judgement in Writ Petition Nos. 114 of 1997 batch dated 29.04.1997, the Transport Corporations have filed appeals in Writ Appeal No. 1017 and 1019 of 1997, apart from many other batch of cases including Writ Appeal No.143, 144 of 1997 etc. While disposing of the batch of appeals, the Division Bench consisting of the Hon'ble Chief Justice M.S.Liberhan and Justice S.Jagadeesan by order dated 08.12.1997, has categorically found that it is not in dispute that the persons who filed the writ petitions are workers as defined under the Industrial Disputes Act. The Division Bench was dealing with two categories of persons namely those persons who have completed 240 days of service and were terminated without complying with Section 25(F) of the Industrial Disputes Act, and those persons who have not completed 240 days and their services have been dispensed with without complying with Section 25(H) of the Industrial Disputes Act.

90. Even then a problem arose, as submitted by the learned

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Advocate General that while re-employing persons, persons who have come through Employment Exchange claimed preference over the persons employed by complying with Section 25(H) of the Industrial Disputes Act. The Division Bench found that persons who belongs to first category and terminated without complying with Section 25(F) of the Act and their termination should be treated as illegal and are liable to be reinstated. Therefore, the Division Bench has directed the respondent Corporations to undertake an exercise in respect of individual cases, where a worker has completed 240 days and the provision of Section 25(F) of the Industrial Disputes Act was not followed, directing them to be reinstated with all back-wages etc. It was found that after due exercise by the respondent Corporation, those workmen were re-employed and it was in those circumstances, the Hon'ble Division Bench has passed the following order:

> "3. After hearing learned counsel for the Parties we are of the view that since the workers were taken in service, it is immaterial whether one was taken through the Employment Exchange or directly under the industrial Law, which is a welfare legislation, a right has been conferred under the act, on worker to have a preference for the employment in case of fresh recruitment over the ones who have not earlier served under the employer. Consequently, the appellant corporation will offer the job t the retrenched employees complying with Section 25-H of the Act, irrespective of the fact whether the worker was employed through the Employment Exchange or directly, unless the Authority come to the conclusion that the employment to the worker was provided malafide or for some ulterior consideration. This exercise may be completed within three months from today."

91. The Writ Appeals were dismissed in the above terms. It is relevant to point out at this stage that Special Leave Petition was filed against the said order of the Division Bench in Writ Appeal Nos.1017 to 1019 of 1997 and ultimately, the said petitions Special Leave to appeal (No.12956 - 12958 of 1998) came to be dismissed in the Hon'ble Supreme Court on 19.03.199 as not pressed. The order of the Hon'ble Apex Court as follows:

> "UPON hearing counsel the Court made the following ORDER
>
> It is stated by learned Additional Solicitor General that in view of the subsequent events, the special leave petitions are not being pressed. They are accordingly dismissed as not pressed."

92. Therefore, on fact it is clear that the said order of the Hon'ble Division Bench passed in Writ Appeal Nos.1017 to 1019 of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

1997 dated 08.12.1997 have become final and is binding upon the respondent Corporations and other Corporations, which have subsequently been created or re-named. It is seen that in spite of the said Division Bench order, there was no further progress resulting in the filing of Contempt Application No.402 of 1999. The complaint of the workers was that the Corporation has only examined the papers and documents and has not looked into its own records to examine, whether each of the workers have really worked at all and further for more than 240 days and ultimately the Division Bench in the Contempt Application has directed the Labour Commissioner, Salem to find out the real position and the Labour Commissioner has found that out of 209 cases, the Union has given up 108 workers, leaving only 101 labourers on fray. The Division Bench found that out of the 101 workers, the management refused to produce the records regarding 40 workers who have not filed the writ petitions and directed the Labour Commissioner to examine all the 209 workers, who have attended the employer as per the direction of the Hon'ble Apex Court and the Division Bench has ultimately held recording the submissions made on behalf of the respondent Corporation that nearly 30 persons will be given advantage of the Section 25(H) of the Industrial Disputes Act, treating them as employees of Corporation and in respect of others a direction was given to Labour Commissioner to take exercise within a stipulated time making it clear that it is open to any of the workman to approach the Labour Court after finding by the Labour Commissioner. This shows that in respect of those employees who were the petitioner before the Court were employed as the workmen under the Industrial Disputes Act and exercise was done at the direction of the Division Bench by the Labour Commissioner only to find out as how many days each of the workers have worked, etc.

93. Again in respect of the Tamil Nadu State Transport Corporation, Coimbatore Division II, and other Transport Corporations certain number of employees were recruited as Drivers through Employment Exchange during March 2001, who underwent selection process and they were also sent to the training in Chithode Training School and on completion of their training, orders were issued in April 2001 appointing them on consolidated wages as trainee Drivers. They have relied upon a settlement entered under Section 12(3) of the Industrial Disputes Act, stating that they should be treated as daily rated workmen and not as on consolidated pay and as per the terms of settlement on completion of 240 days as Drivers, they should be made permanent. Subsequent to the competition of their 240 days of work, they were made as Drivers by issuance of orders in January to March 2003 under regular basis. However, those Drivers were terminated from services by order dated 03.04.2003, which was challenged by the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

said 75 Drivers individually. The writ petitions were finally disposed of by a common order by the Hon'ble Justice K.Sivasubramaniam in W.P.No.12279 of 2003 batch in the following terms:

> "14. However, in view of the stand taken by the Corporation as mentioned above and bearing in mind the right of the workers to seek compliance of the terms of settlement under Section 12(3) of the Industrial Disputes Act, I am inclined to pass the following order:-
>
> (i) The services of the petitioners shall not be terminated, other than the 31 employees who have already been relieved.
>
> (ii) They will be retained in service on the same terms and conditions and salary as they were entitled to before the order of confirmation were issued on 30.01.2003.
>
> (iii) Their services will not be terminated merely on the basis that their appointments are temporary and that their period of training has been completed. They will continue to be employed in the same capacity and in the same terms as before 30.01.2003 till they are regularized in service as and when vacancies in the permanent cadre arise or the permanent cadre strength is increased. It is not disputed that their services are being utilized and are required as on date.
>
> (iv) It is open to the Corporation to take action against any individual employee for any misconduct either in the context of the allegation of fraud or collusion as stated above or any misconduct which may arise in future and this order will not stand in the way of such action."

94. It was as against the said judgement of the learned Single Judge, appeals were filed in Writ Appeal No.2985 of 2003 etc., batch. The Division Bench consisting of Hon'ble Justice P.Sathasivam and Hon'ble Justice S.K.Krishnan, in the order dated 08.12.2005 have found that it is not in dispute that the petitioners were appointed by following the procedure and method of recruitment by calling for list from Employment Exchange concerned and it is also not in dispute that they were sent for training after selection and therefore, they are entitled for permanent absorption in the available vacancies as per the terms of settlement under Section 12(3) of the Industrial Disputes Act.

95. The Division Bench has also considered the submissions by Mr.N.R.Chandran learned Senior Counsel appeared on behalf of the Transport Corporation that the orders of confirmation given to those workers were invalid because the confirmation were given in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the post which were not in existence. By referring to the judgement of the Hon'ble Supreme Court in the State of Punjab Vs. Jagadeshsing reported in AIR 1964 SC 521, the Division Bench has found that paragraph 14 of the order passed by the learned Single Judge as narrated above, is to be made applicable even to all workers who have not approached the court.

96. While dealing with the other batch of writ petitions filed for the purpose of implementing the orders of the Division Bench in Writ Appeal Nos.1017 to 1019 of 1997 dated 08.12.1997, by applying Section 25(H) of the Industrial Disputes Act, the Division Bench after exhaustively explaining and defining the provisions of the Industrial Disputes Act, relating to Section 25(H) and all other legal implications with the case laws, and also after considering the submission of the learned Senior Counsel for the Transport Corporation Mr.N.R.Chandran, held that Section 25(H) of the Industrial Disputes Act, is clear that the retrenched workmen should be given an opportunity to offer themselves for re-employment and when once they offer themselves for re-employment, they should have preference over other persons, however, relaying upon the judgement of the Hon'ble Supreme Court reported in 2003(5) SCC 341 that the term "preference" means only when other things being equal and therefore, the petitioners cannot demand employment by using Section 25(H) of the Industrial Disputes Act has held in categoric manner as follows:

> "26. On going through the Division Bench decision dated 08.12.1997, specific direction therein, the language used in Sections 25-H, 25-J of the Act and Rule 63 of the Rules as well as various orders passed by the learned Single Judges of this court, following the Division Bench decision dated 08.12.1997, we are unable to accept the argument projected by the learned Senior Counsel for the Transport Corporation. Section 25-J uses non-obstanti clause placing the right of re-employment provided under Section 25-H in Chapter V-A of the Act in higher pedestal. Further, Section 25-H uses, "any workmen" and workman is defined under Section 2(s) of the Act and the said definition is wide and includes all category of workmen, such as permanent, temporary, casual, badli, etc. More over, Section 25-H uses "any person" and that therefore irrespective of the category for which vacancy arose, the right of re-employment is protected under Section 25-H."

The Division Bench proceeds further

> "27. We have already extracted the direction/observation of the Division Bench dated 08.12.1997 and in view of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

same, we are of the view that the respondents-Transport Corporations are bound to offer jobs to the petitioners. It is not in dispute that the Transport Corporations filed Special Leave Petition before the Supreme Court and the same was dismissed as withdrawn. It was also brought to our notice that later, they have filed Review and the Review was also dismissed. Though an argument was advanced that the judgement in Writ Appeal Nos.1294 to 1299 of 1997 etc., dated 08.12.1997 was based on the concession given by the counsel for the Transport Corporation, it is brought to our notice that this argument was rejected by another Division Bench judgement in W.A.No.2083 of 1999 dated 26.10.1999."

97. Therefore, the reference to the said paragraphs would show that the Division Bench in Writ Appeal No.2985 of 2003 etc. batch dated 08.12.2005 has not only considered the employees of all Transport Corporations but also the judgement of the earlier Division Bench in Writ Appeal No.1017 to 1019 of 1997 dated 08.12.1997. This shows that it can never be argued that the said judgement applies only in respect of the particular case alone, even though the Division Bench has held in paragraph 29 as follows:

"29. Apart from the series of orders of this Court based on the earlier Division Bench order which became final, as rightly pointed out by the learned counsel for the petitioners, the Transport Corporations are bound by their own assurance given based on the Court orders, they are estopped from going back on their assurance."

98. Ultimately, the Division Bench has passed the following final order, which runs as follows:

"34. We pass the following orders:

(i) Writ Appeals are allowed. The appellants are entitled similar orders/directions/observations as provided in para 14 of the order of the learned Single Judge dated 13.05.2003 in Writ Petition Nos. 11785 of 2003 etc., batch:

(ii) In view of the allowing of the Writ Appeals, the Writ Petitions, namely, Writ Petition Nos. 31378 to 31383, 31430 to 31433, 31499 to 31504, 31534 to 31539, 33870 to 33876 of 2005 are dismissed, as agreed to by Mr.D.Hariparanthaman;

(iii) (a) In other Writ Petitions direction is issued to the respondents-Transport Corporations to provide re-employment to the writ petitioners who completed 240 days in the respective Corporations and satisfied other conditions, if any, in accordance with

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the Section

(b) Those (writ petitioners) who worked less than 240 days shall also be given re-employment and their services will be regularized, only after completion of 240 days and subject to fulfilling other conditions, if any. Writ Petitions are allowed on the above terms. No Costs. Consequently, connected miscellaneous petitions are closed."

99. A clarification was sought for in respect of the above said order of the Hon'ble Division Bench dated 08.12.2005 passed in Writ Appeal No.2985 of 2003 etc., batch and ultimately, by the order dated 07.04.2006 passed in W.P.M.P.No.7523 of 2006 in W.P.No.38097 of 2005 etc., batch, the Division Bench while clarifying paragraph 34 III(a) has held that the other conditions mentioned therein means physical fitness and eye fitness and driving skill test in respect of Drivers. The clarification runs as follows:

" 4. It is the grievance of the petitioners that since all these persons have been in employment from 1996, in any event before 1999, they satisfy the required conditions prevailing as on the said date. It is also pointed out that it is not a case of fresh employment. On the other hand, as per the earlier order of this Court dated 8/9.12.2005, it is the case of re-employment. In such circumstances, though in the earlier order in paragraph 34(iii)(a), this Court directed them to satisfy "other conditions, if any,", in the light of the factual information that all of them satisfied the required conditions prevailing on the relevant dates viz., 1996-1999, we make it clear that all those persons referred to in the main order are to be considered subject to satisfaction of (a) physical fitness and eye fitness (b) driving skill test in respect of drivers. After satisfaction the above two conditions, the respondent Corporations are directed to give re-employment as per the orders of this Court dated 8/9.12.2005.

5. In the course of the argument, it is also brought to our notice that by letter dated 03.03.2006, the Chief Electoral officer and Secretary to Government sent a letter to the Secretary to Government, Transport Department, Chennai 600 009 instructing all the State Transport undertakings that even if appointment orders have been issued, they should not be allowed to join duty before the completion of the process of election. For this, we clarify that the persons involved in these petitions are not new appointees. On the other hand,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

they worked in the Transport Corporations in the year 1996-1999. For various grievance, they approached this Court and by contested order of this Court dated 8/9.12.2005, directions have been issued to the respective Transport Corporations for reemployment. In view of the same, we clarify that the instructions issued by the Chief Electoral Officer and Secretary to Government, Chennai, is not applicable to the cases on hand. To this extent, we clarify our earlier order and these petitions are ordered accordingly. The above direction shall be complied with within a period of three weeks from the date of receipt of a copy of this orders."

100. Therefore, on fact it is clear that the respondent Corporations are bound to give re-employment to those persons who were earlier employed in the respondent Corporations and retrenched from service. There is a clear case of estoppel against the respondent Corporations in respect of the same. This is relevant to point out that the direction given by the Division Bench of this Court as stated above are in accordance with the statutory compulsion and requirements under Section 25(H) of the Industrial Disputes Act, and it does not require any further clarification.

101. Even though the various provisions of the Industrial Disputes Act, have been exhaustively discussed and explained in detail by the Division Bench, since a point is raised by one of the learned counsels Mr.Palani that Section 25(H) of the Industrial Disputes Act, cannot be read to encourage illegality in public employments and therefore, it is relevant to again refer to some of the provisions of the Industrial Disputes Act. The avowed object of the Industrial Disputes Act, is to settle the dispute between the workmen and employer, workmen and workmen, etc, in a more feasible manner along with the conciliation efforts so as to bring industrial peace. Therefore, Industrial Disputes Act, is one the beneficial legislations, which is normally construed liberally. The Industrial Disputes Act, defines the term "workmen" under Section 2(S) of the Act, as follows:

"[s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire of reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a person; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"

102. Therefore, the except those who are excluded, the term "workmen" is vide in its sense, and it even includes an apprentice for the purpose of giving benefit of the provisions of the Industrial Disputes Act. A reference to the Industrial Disputes Act shows that there is no distinction between the temporary workmen and the permanent workmen under the Industrial Disputes Act. It is only in cases where for the purpose of conferring certain benefits like retrenchment compensation, the Act contemplates the workers to have worked for a particular period so as to enable them to get the monitary compensation. One such provision is Section 25(F) of the Industrial Disputes Act, which contemplates certain condition precedents for the retrenchment of workmen and the said section runs as follows:

"25F. Conditions precedent to retrenchment of workmen - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months;

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette)"

103. The term "continuous service" mentioned under Section 25

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(F) of the Act, is defined under Section 25(B) of the Act, which runs as follows:

"25B. Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days, in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months, preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.- For the purpose of claue (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]"

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

104. Further, the term "retrenchment" is defined under Section 2(oo) of the Industrial Disputes Act, which runs as follows:

> "(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action,"

105. It is also relevant to point out that the said Section 25(F) which is under Chapter V(A) has over riding effect, as it is seen under Section 25(J) of the Act, which runs as follows:

> "25J. Effect of laws inconsistent with this Chapter.- (1) The provisions of this Chapter shall have effect not withstanding anything inconsistent therewith contained in any other law (including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946)):
>
> (Provided that where under the provisions of any other Act or rules, orders or notifications issued there-under or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters matters under this Act.)
>
> (2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter.)"

106. Therefore, a reading of the retrenchment and Section 25 (F) shows that in respect of the worker, who has been retrenched, he shall be entitled for a compensation and it is for the purpose of fixing the compensation, the work for 240 days in a period of one year, is a condition precedent.

107. In addition to the rights conferred under the above said Section 25(F) of the Industrial Disputes Act, Section 25(H) of the Industrial Disputes Act, confers a further benefit to the workmen,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

who has been retrenched, giving him an option for re-employment, when the employer proceeds to re-employ persons. Therefore, under the concept of retrenchment, which does not impute with sigma of any punishment on a workmen but termination for any other reason, the employee who has been retrenched, apart from the compensation is eligible for re-employment, in cases were the employer proceeds to offer fresh employment. That right is a preferential right given to the retrenched workman. It is in this regard, significant to note that the duty of the employer to provide preferential treatment by making offer of appointment to the retrenched workmen in an establishment is mandatory in nature, which is signified by the term "who offer themselves for re-employment shall have preference over other persons". Therefore, it is clear that when once the employer proceeds to re-employe, after retrenchment of the workmen, the first offer shall go to the persons, who were already employed in the establishment and retrenched, whether retrenchment compensation was paid to him or not and that offer is a mandatory duty of the employer. Of course, it is for the employee either to decide to accept the same or not. This is not only the statutory obligation on the part of the employer but also certainly a legal right which has been enshrined under the Industrial Disputes Act, especially in the circumstance that retrenchment is not a termination on disciplinary ground.

108. It was to streamline the said avowed object of the Industrial Disputes Act, especially, relating to Section 25(H), the Industrial Disputes (Central) Rule, 1957, contemplates the procedure to be followed for the purpose of effectively implementing the objects and the relevant Rules are 77 and 78, which run as follows:

> "77. Maintenance of seniority list of workmen.- The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated, arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.
>
> 78. Re-employment of retrenched workmen.- (1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall give intimation of those vacancies by registered post to every one of all the retrenched

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time thereafter:

Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the senior most retrenched workmen in the list referred to in rule 77, the number of such senior-most workmen being double the number of such vacancies:

Provided further that where the vacancy is of a duration of less than one month shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen:

(Provided also that if a retrenched workman, without sufficient cause being shown in writing to the employer, does not offer himself for re-employment on the date or dates specified in the intimation sent to him by the employer under this sub-rule the employer may not intimate to him the vacancies that may be filled on any subsequent occasion.)

(2) Immediately after complying with the provisions of sub-rule (1), the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under that sub-rule:

Provided that the provisions of this sub-rule need not be complied with by the employer in any case where intimation is sent to everyone of the workmen mentioned in the list prepared under rule 77."

109. The Tamil Nadu Government has framed the Tamil Nadu Industrial Disputes Rules, 1958, which also correspondingly provides the provisions for streamlining the effective implementation of Section 25(H) of the Industrial Disputes Act. They are Rule 62 and Rule 63, which run as follows:

"62. Maintenance of seniority list of workmen.

(1) The employer shall prepare and maintain a list of all workmen in each category employed in his establishment, their names being arranged according to seniority of service in the category concerned. He shall make out copies of the list of all workmen in the particular category in which retrenchment is contemplated indicting in it clearly the names of all those who are proposed to be retrenched and cause copies of such list to be pasted on the notice board in a conspicuous place in the premises of the establishment easily accessible to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the workmen, at least seven days before the date of actual retrenchment. Copies of the list shall also be sent to the registered trade union connected with the industrial establishment.

(2) As soon as a retrenchment is effected, he shall also prepare another list of workmen who were retrenched at the time as also those retrenched during the (preceding twenty-four months), their names being arranged according to the seniority of their service in the category and cause copies thereof to be pasted on the notice board in a conspicuous place in the premises of the establishment easily accessible to the retrenched workmen. Copies of the list shall also be sent to the registered trade union connected with the industrial establishment:

63. Re-employment of retrenched workmen.--

(1) On the occurrence of vacancies after retrenchment, when an employer proposes to take into his employ any person, he shall --

(i) arrange for the display on the notice board in the premises of the industrial establishment of the details of the vacancies to be filled:

(ii) give notice of the vacancies in writing to every individual retrenched workman eligible to be considered for the vacancies, such notice being dispatched by registered post to the address given by the workman at the time of retrenchment or any time thereafter:

(iii) at the same time send a notice to the registered trade union or unions of workmen connected with the industrial establishment giving the number of vacancies and the names of the retrenched persons addressed; and

(iv) if the employer seeks the assistance of the Employment Exchange in the area in filling the vacancies, inform the Exchange that the names of such of his retrenched employees as may have been registered with the Exchange may be submitted to him along with the names of other suitable candidates:

(Provided that clause (ii) shall not apply to vacancies which are temporary or casual and of less than a month's duration or which arise after the expiry of a period of two years from the date of retrenchment.

(2) A retrenched workman on receipt of the notice of vacancies from the employer shall offer himself for work or send a reply within a period of ten days from the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

date on which the notice is posted, and, if he fails to do so, he shall lose all his claim for preference in future vacancies and the employer shall be free to fill the vacancies in all cases when retrenched persons do not come forward for re-employment."

110. In this regard, it is relevant to point out that the minute difference between the Central Rule and the State Rule is, while the Central Rule does not contemplate the duty of the employer in preparing the list of workmen retrenched for any preceding period, the State Rule contemplate the duty of the employer to prepare the list of retrenched employees during the preceding 24 months. However, it is to be pointed out that even under the State rules the term is not only restricted to the preceding 24 months but also it states that "the employer shall prepare another list of workmen, who were retrenched at the time as also those retrenched during the preceding 24 months ("the emphasis is mine"). Therefore, even a reading of the Tamil Nadu rules show that the right of employees retrenched is not restricted to those who were retrenched within 24 months from the date of retrenchment but it applies to all the retrenched workmen who were earlier employed in the establishment, irrespective of the year of employment and year of retrenchment, as it can be seen plainly in the Central rule and can be harmoniously construed in respect of the State rule also.

111. Even otherwise, there is absolutely no difficulty to come to a conclusion that when once Section 25(H) of the Industrial Disputes Act confers a mandatory duty on the part of the employer and enforceable right on the part of the workmen without insisting any period of limitation, even if such limitation is prescribed by the rules, those rules can never stand to the test of law.

112. Therefore, it is clear that the duty of the employer in so far as those persons, who were earlier employed and are retrenched, to prepare the list of those retrenched persons for the purpose of offering the job subsequently, when the employer proceeds to make re-employment, which is a mandatory right. It goes without saying that even if the employer fails to follow the provisions of the Rules, the right given under the Act, namely, under Section 25(H) of the Industrial Disputes Act, cannot be stated to be taken away, since in my considered view and as it has been categorically held by the Division Bench also, it is a very valuable substantial right conferred on a workmen, who was asked to go out of the employment not based on the stigma of disciplinary proceedings but due to other reasons which are not attributable to the workmen.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

113. As I have stated, the right under Section 25(H) of the Industrial Disputes Act, is applicable to all the retrenched workmen whether following the condition precedent as enunciated under Section 25(F) of the Industrial Disputes Act, which contemplates under conditions, namely, that he must have been continuous service for not less than one year, as it is defined under Section 25(B) of the Act, or not. While the right of compensation payable to retrenched employee under Section 25(F) is not a condition precedent for the offering of reemployment to the retrenched employee under Section 25(H) of the Industrial Disputes Act, while offering the reemployment, employees who were paid or eligible for payment of retrenchment compensation under Section 25 (F) shall stand above the employees, who are not eligible for such compensation under Section 25(F). The restricted meaning of the word retrenchment in relation to conferring of benefits under Section 25(F) is not applicable to Section 25(H) of the Act, while offering reemployment, which means that even if a retrenched employee is not entitled for the benefit under Section 25(F), he will be eligible for conferment of his rights under Section 25(H). Of course as stated above among them, while offering reemployment the retrenched employees entitled to the benefit under Section 25 (F) stand ahead of the other retrenched employees not entitled for benefits under Section 25(F), thereby not having worked for the continuous period as per Section 25(B), in order of preference. This was the law laid down by the Hon'ble Apex Court in Central Bank of India Vs. S.Sathyan and others reported in 1996(1) LLJ 820. The operation portion of the judgement of the Hon'ble Apex court are

> "In other words, the expression 'continuous service for not less than one year' in Section 25-F has to be so construed by virtue of Section 25-B. The benefit of applicability of Section 25-F can, therefore be claimed by a workman only if he has been in continuous service for not less than one year as defined in Section 25-B. Any other retrenched workman who does not satisfy this requirement of continuous service for not less than one year cannot avail the benefit of Section 25-F which prescribes the conditions precedent to retrenchment of workman of this category. Section 25-G prescribes the procedure for retrenchment and ordinarily applies the principle of 'last come first go'.
>
> 7. Section 25-H the provides for reemployment of retrenched workmen. It says that when the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

offer themselves for reemployment, and such retrenched workmen who offer themselves for reemployment shall have preference over other persons. Rule 77 and 78 of the Industrial Disputes (Central) Rules, 1957 prescribe the mode of re-employment. Rule 77 requires maintenance of seniority list of all workmen in a particular category from which retrenchment is contemplated arranged according to seniority of their service in that category and publication of that list. Rule 78 prescribes the mode of reemployment of retrenched workmen. The requirement in Rule 78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for reemployment. Shri Pai contends that Rule 77 and 78 are unworkable unless the application of Section 25-H is confined to the category of retrenched workmen to whom Section 25-F applies. We are unable to accept this contention.

8. Rule 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated arranged according to the seniority of their service. The category of workmen to whom Section 25-F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority list of workmen with reference to the particular category to which they belong. Rule 77, therefore, does not present any difficulty. Rule 78 speaks of retrenched workmen eligible to be considered for filling the vacancies and here also the distinction based on the category of workmen can be maintained because those falling in the category of Section 25-F are entitled to be placed higher than those who do not fall in that category. It is no doubt true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for reemployment earlier than those placed lower because of a lesser period of service. In this manner a workman falling in the lower category because of not being covered by Section 25-F can claim consideration for reemployment only if an eligible workman above him in the seniority list is not available. Application of Section 25-H of the other retrenched workmen not covered by Section 25-F does not, in any manner, prejudice those covered by Section 25-F because the question of consideration of any retrenched workman not covered by Section 25-F would arise only, if and when, no retrenched workman covered by Section 25-F is available for

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

reemployment. There is, thus no reason to curtail the ordinary meaning of 'retrenched workmen' in Section 25-H because of Rules 77 and 78, even assuming the rules framed under the Act could have that effect.

9. The plain language of Section 25-H speaks only of re-employment of 'retrenched workmen'. The ordinary meaning of the expression 'retrenched workmen' must relate to the wide meaning of 'retrenchment' given in Section 2(oo). Section 25-F also uses the word 'retrenchment' but qualifies it by use of the further words 'workman ..... who has been in continuous service for not less than one year'. Thus, Section 25-F does not restrict the meaning of retrenchment but qualifies the category, of retrenched workmen covered therein by use of the further words 'workman ..... who has been in continuous service for not less than one year'. It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provisions therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of 'last come first go' which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25-F.

10. The next provision is Section 25-H which is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25-F. It does not require curtailment of the ordinary meaning of the word 'retrenchment' used therein. The provision for reemployment of retrenched workmen merely gives preference to a retrenched workman in the matter of reemployment benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman.

11. Chapter V-A providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25-F applies but for all cases of retrenchment

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

and, therefore, there is no reason to restrict application of Section 25-H therein only to one category of retrenched workman. We are, therefore, unable to accept the contention of Shri Pai that a restricted meaning should be given to the word 'retrenchment' in Section 25-H. This contention is, therefore, rejected."

114. The Hon'ble Apex Court while deciding about the retrenchment has emphasised the term termination for any reason whatsoever, excluding punishment inflicted by way of disciplinary proceeding and held that expression retrenchment could not be given a narrow interpretation to cover cases of discharge from service on account of surplus only. That was the judgement reported in 1980 (2) LLJ 72 rendered in Santhosh Guptha Vs. State Bank of Patiala.

115. While analysing the various earlier judgements of the Hon'ble Apex Court, wherein the termination included an automatic cessation of service as per the order of appointment, that was the case wherein, the workmen was terminated not on the ground of surplus labour but "due to the failure of the workmen to pass the test which would have enabled her to be confirmed in the service" and in such circumstances, negativing the contention of the employer that it would not cover under the term retrenchment under Section 2(oo) of the Industrial Disputes Act, holding that the discharge of workmen on the ground, she did not pass the test, was retrenchment within the meaning of Section 2(oo) of the Act. The operative portion of the judgement of the Hon'ble Apex court as follows:

"14. Dr.Anand Prakash, cited before us the decision of a full Bench of the Kerala High Court in Robert D'Souza Vs. Executive Engineer, Southern Railway and another, (1979-I L.L.J.211), and some other cases decided by other High Courts purporting to follow the decision of this Court in Hariprasad Shivshankar Shukla Vs. A.D.Divikar's case, (supra) Shukla's case, we have explained. The ratio of Shukla's case in fact, has already been explained in Hindustan Steel Ltd. Vs. The Presiding Officer, Labour Court Orissa and others (Supra). The decision in Hindustan Steel Ltd., Vs. The Presiding Officer, Labour Court, Orissa and others (Supra), The State Bank of India Vs. N.Sundara Money (Supra) have, in our view, properly explained Shukla's case and have laid down the correct law. The decision of the Kerala High Court in L.Robert D'Souza Vs. Executive Engineer, Southern Railway and another (supra) and the other decisions of the other High Courts to similar effect, viz., The Managing Director, National Garage Vs. J.Gohsalve, (1962-I L.L.J.56);

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Goodless Nerloc Paints Vs. Chief Commissioner, Delhi (1967-I L.L.J.545), and Rajasthan State Electricity Board Vs. Labour Court, (1966-I L.L.J. 381), are therefore, overruled, We hold, as a result of our discussion, that the discharge of the workman on the ground she did not pass the test, which would have enabled her to be confirmed was "retrenchment" within the meaning of S.2 (oo) and, therefore, the requirements of S.25F had to be complied with. The order of the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, New Delhi, are set aside and the appellant is directed to be reinstated with full back wages. The appellant is entitled to her costs." (the emphasis is mine)

116. In a subsequent decision of the Hon'ble Supreme consisting of 5 judges, when the issue involved was that the workmen under the management of the Punjab Land Development and Reclamation Corporation Ltd., Chandighar and their services were terminated on the ground that the Chairman had no power to appoint them, that was the case decided in 1990(2) LLJ 70 (Punjab Land Development and Reclamation Corporation Ltd., Chandigarh etc, and several others Vs. Presiding Officer, Labour Court, Chandigarh, etc., and several others), wherein by elaborately discussing the entire case law on the issue, the Hon'ble Apex Court with authoritative pronouncement has laid down as follows:

"82. Applying the above reasonings, principles and precedents, to the definition in S.2(oo) of the Act, we hold that "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the Section."

117. In yet another judgement of the Hon'ble Apex Court rendered in D.K.Yadav Vs. J.M.A. Industries Ltd., reported in 1993 (2) LLJ 696, while considering the law laid down in 1990(2) LLJ 70, the Hon'ble Apex Court has again authoritatively pronounced as follows:

"3. In Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh, 1990-II-LLJ-70 the Constitution Bench considered the scope of the word 'retrenchment' defined by S.2(oo) and held in para 71 at page 91 that analysing the definition of retrenchment in S.2(oo) we find that termination by the employer of the service of a workman would not otherwise have covered the cases excluded in Cls.(a) and (b) namely, voluntary retirement and retirement on

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

reaching the stipulated age of retirement or on the ground s of continued ill health. There would be no violational element of the employer. Their express exclusion implies that those would otherwise have been included". In para 77 at page 94 it was further held that "right of the employer and the contract of employment has been affected by introducing S.2(oo)". The contention of the management to terminate the service of an employee under the Certified Standing Orders and under the contracts of employment was negatived, holding that the right of the management has been affected by introducing of S.2(oo) and S.25F of the Act. The second view was that the right as such has not been affected or taken away, but only an additional social obligation has been imposed on the employer to abide by the mandate of S.25F of the Act to tide over the financial difficulty which sub serves the social policy. This Court relied on the maxim - Stat pro ratione valuntas populi: the will of the people stands in place of a reason. In paragraph 82 at page 95 this Court concluded that the definition in S.2(oo) of the Act of retrenchment means "the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section". Same view was taken by three Benches of three Judges of this Court in State Bank of India Vs. N.Sundara Mani 1976-I-LLJ-478, Delhi Cloth & General Mills Ltd., Vs. Shambhu Nath Mukherjee, 1978-II-LLJ-1 and Hindustan Steel Ltd., Vs. Presiding Officer, Labour Court, 1977-I-LLJ-1 and two Benches of two judges in Robert D'Souza V. Executive Engineer Southern Railway 1982-I-LLJ-330 and H.D.Singh V. Reserve Bank of India (AIR 1986 sc 132) took the same view. Therefore, we find force in the contention of SriR.K.Jain, the learned Senior counsel for the appellant, that the definition 'retrenchment' in S.2(oo) is a comprehensive one intended to cover any action of the management to put an end to the employment of an employer for any reason whatsoever. We need not, however, rest our conclusion on this point as in our considered view it could be decided on the other contention raised by Sri Jain that the order is violative of the principles of natural justice. We are impressed with that argument. Before dealing with it, it is necessary to dispose of inter-related contentions raised by Dr.Anand Prakash."

118. In a recent judgement rendered by the Hon’ble Apex Court

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

in Indian Petrochemicals Corporation Ltd., and another Vs. Shramik Sena and another reported in 2001(2) SCC 529, which was the case relating to the management running a canteen and as per the requirement of the Factories Act, 1948, when a claim of regularisation was made, wherein the Hon'ble Apex Court has referred to about the 5 conditions for the purpose of absorbing employees, namely,

a) At the time of initial appointment, the workmen should be complying with the minimum and maximum age limit prescribed under the policy of the Corporation.

b) They must be medically fit according to their standards prescribed by the Corporation

c) Those who were appointed prior to the filing of the writ petition must have 3 years minimum service to their credit on the date of the present judgement.

d) Those who were appointed during the pendancy of the writ petition must have 4 years of minimum service to their credit on the date of the present judgement and

e) All those who are not absorbed in service of the Corporation for any of the reasons indicated above their cases shall be considered in accordance with the provisions of the Industrial Disputes Act, 1947.

When fresh recruitment to the canteen staff was made by the Corporation, after discussing the entire case law and also referring to Section 2(s) of the Industrial Disputes Act, which makes the Chapter V (A) of the Industrial Disputes Act, apply to the Industrial establishment, the Hon'ble Apex Court has passed the following order:

> "15. From the above discussion, it follows that the obligation to comply with Condition (e) is contingent upon the retrenchment of the workmen in accordance with law. It is not disputed that the management is an industrial establishment to which Chapter V-B complies; if that be so, Sections 25-N and 25-H read with Section 25-S will be attracted. Therefore, we are of the view that the following direction in the impugned order of the High Court, "we direct that those workers who do not fulfil Directions (a),(b),(c) and (d) of the conditions for regularisation, be retrenched in accordance with law after following the provisions of Chapter V-B of the Industrial disputes Act, 1947", does not correctly interpret Condition (e). In our view, Condition (e) postulates that in the event of the management choosing to retrench the workmen who do not fulfil Directions (a) to (d) of the conditions for regularisation, they shall be paid retrenchment compensation under Section 25-N and their cases for reemployment should be considered under

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Section 25-H of the Act."

119. In another judgement rendered in Workmen rep. by Akhil Bhartiya Koyla Kamgar Union Vs. Employers in Relation to the Management of Industry Colliery of Bharat Coking Coal Ltd., and others reported in 2001(4) SCC 55, while dealing with the coking coal mines (Nationalisation) Act, 1972, wherein under Section 8 and 9 of the said Act, provides immunity to Central Government from prior liabilities, the Hon'ble Apex Court has held that the obligation of the employer under Section 25(H) of the Act, does not fall within the scope of Section 9 of the Nationalisation Act, in the following words:

> "6. Bearing these principles in mind if we examine the scope of the Nationalisation Act, we may notice that in respect of properties that vested in the Central Government, as provided under Section 8 and 9, the Nationalisation Act provides immunity to the Central Government or its company from prior liabilities. Chapter III of the Nationalisation Act provides for payment of amount under that chapter. Chapter VI provides for appointment of Commissioner of Payments who has an obligation to deal with the claims made Section 23 of the said Act to persons who make a claim before the Commissioner within 30 days from the specified date. On examination of the provisions thereof, we may relate all those items that have been mentioned in Section 9 to Section 23 of the Nationalisation Act. They all pertain to pecuniary or commercial obligations and not to other matters. The claim made in the present case is one relating to employment under Section 25-H of the Act which merely creates an obligation that a retrenched workman will have preference when fresh appointments are made and an opportunity will have to be given to them to offer themselves for reemployment. Such an obligation does not fall within the scope of Section 9 of the National Act."

120. Therefore, the above analysis of the case law on the subject shows that the obligation of the employer under Section 25 (H) of the Industrial Disputes Act, is unfettered and absolute and is available to all retrenched employees except those who are excluded under Section 2(oo) of the Industrial Disputes Act, and such employees entitled for reemployment include even cases where the original appointment were made by the authority not competent and also in cases where the original appointment was lacking certain qualifications.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

121. It was considering all those legal position in detail, the Hon'ble Division Bench in the judgement rendered in M.Sekaran Vs. General Manager, Tamil Nadu State Transport Corporation, Coimbatore Division II, Erode reported in 2006(1) LLN 257 has passed the following operative orders:

> "(iii)(a) In other writ petitions direction is issued to the respondents-Transport Corporations to provide re-employment to the writ-petitioners, who completed 240 days in the respective Corporations and satisfied other conditions, if any, in accordance with S.25H of the Industrial Disputes Act in preference to new entrants.
>
> (b) Those (writ petitioners) who worked less than 240 days shall also be given re-employment and their services will be regularised, only after completion of 240 days and subject to fulfilling other conditions, if any."

122. In this connection it is relevant to point out that the question of regularisation was not in issue and in respect of the petitioners, who have worked less than 240 days, were directed to be given reemployment subject to other conditions, namely, the requirement of 240 days in the preceding one year, so as to make such workmen eligible for reemployment on regular basis after completion of 240 days subject to the above conditions and as subsequently clarified by the Hon'ble Division Bench in the order dated 07.04.2006 in W.P.M.P.No.7523 of 2006, etc., in W.P.No.38097 of 2005 etc., stating that the right of reemployment is only subject to two conditions, namely,

a) Physical fitness and eye fitness
b) Driving skill test in respect of Drivers

which should be taken as other conditions. Therefore, it is clear that the law laid down by the Hon'ble Apex Court in the series of judgements stated above, as followed by the Hon'ble Division Bench of this Court were consistent as far as applicability of Section 25 (H) of the Industrial Disputes Act, is concerned, making it clear that it is the statutory obligation on part of the employer to provide reemployment in respect of retrenched workmen, irrespective of considering the nature of their original appointment, for, it is only the retrenchment, which has been followed as per the conditions laid down under the Industrial Disputes Act.

123. By considering the above said facts, there is absolutely no difficulty to come to the conclusion, especially taking into consideration the avowed object of the Industrial Disputes Act, that the purport of the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006, especially relating to Clause 4, is perfectly in accordance with the statutory obligation, as enshrined

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

under the Industrial Disputes Act, of course, apart from the orders of the court. It can never be said that persons who got order from this Court for the purpose of implementing their right under Section 25(H) of the Industrial Disputes Act, alone should be conferred the benefit of the Act.

124. It is in this situation relevant to point out, the judgements relied upon by the learned Senior Counsel appearing for the petitioners Mr.N.R.Chandran, namely, the judgement reported in A.Umarani Vs. Registrar, Cooperative Societies and others reported in 2004(7) SCC 112 and Secretary, State of Karnataka and others Vs. Umadevi and others reported in 2006(4) SCC 1. The Hon'ble Apex Court has dealt with the case of appointment made in contravention of mandatory provisions of the Tamil Nadu Industrial Establishments (conferment of permanent status workmen) Act, 1981, and regularisation of such employees who were irregularly appointed and held that the appointments made in contravention of mandatory provisions of the Act and statutory rules framed in ignorance of the qualifications will be illegal and cannot be regularized by the state by invoking powers under Article 162 of the Constitution of India and also dealing with the Tamil Nadu Cooperative Societies Act, 1983, especially, when the said Act of the 1981 makes a statutory obligation on the part of the societies to notify the Employment Exchange regarding the existing vacancies and those appointments were sought to be regularized.

125. By relying upon the previous judgements of the Hon'ble Apex Court in R.N.Nanjundappa Vs. T.Thimmiah reported in 1972(1) SCC 409, apart from the judgement in State of Mysore Vs. S.V.Narayanappa reported in AIR 1967 SC 1071 it was held that there cannot be a regularization permissible in exercise of the statutory powers of the state under Article 162 of the Constitution of India, if the appointments have been made in contravention of statutory rules.

126. Likewise, in the judgement of the Hon'ble Apex Court in Umadevi's case reported in 2006(4) SCC 1, the decision was rendered in respect of public employment apart from absorption, regularisation and permanent continuance of temporary and contractual appointees in public employment, dehorse the constitutional scheme of public employment. The Hon'ble Apex Court has dealt with the case of the rules framed regarding public employment under Article 309 of the Constitution of India and also dealing with the circumstances wherein, the persons, who were appointed by the state on a temporary basis or daily wages or casually and who were working in the sanctioned post without possessing requisite qualification in the said post and made claim

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

for regularisation, the Hon'ble Apex Court has heavily come down against the regularisation of such persons who are not qualified. The relevant passage from the judgement of the Hon'ble Apex Court in this regard as follows:

> " 6. The power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily (see Basu's Shorter Constitution of India). Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. That article contemplates the drawing up of a procedure and rules to regulate the recruitment and regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedures which specify the necessary qualifications, the mode of appointment, etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules. The State is meant to be a model employer. The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 was enacted to ensure equal opportunity for employment seekers. Though this Act may not oblige an employer to employ only those persons who have been sponsored by employment exchange, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure. Normally, statutory rules are framed under the authority of law governing employment. It is recognised that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under the constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.
>
> 7. These two sets of appeals reflect the cleavage of opinion in the High Court of Karnataka based on the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

difference in approach in two sets of decisions of this Court leading to a reference of these appeals to the Constitution Bench for decision. The conflict relates to the right, if any, of employees appointed by the State or by its instrumentalities on a temporary basis or on daily wages or casually, to approach the High Court for the issue of a writ of mandamus directing that they be made permanent in appropriate posts, the work which they were otherwise doing. The claim is essentially based on the fact that they having continued in employment or engaged in the work for a significant length of time, they are entitled to be absorbed in the posts in which they had worked in the department concerned or the authority concerned. There are also more ambitious claims that even if they were not working against a sanctioned post, even if they do not possess the requisite qualification, even if they were not appointed in terms of the procedure prescribed for appointment, and had only recently been engaged, they are entitled to continue and should be directed to be absorbed."

The Hon'ble Apex Court has ultimately held in para

"26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitment and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent - the distinction between regularisation and making permanent, was not emphasised here-can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in para 50 (of SCC) of Piara Singh is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognised in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent."

127. Two other paragraphs of the judgement of the Hon'ble Apex Court, which are relevant to be extracted in this regard are

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

as follows:

" 49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an arguments of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Article 14 and 16 of the Constitution.

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Article 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality."

128. Therefore, it is clear that while dealing with the rules framed under Article 309 of the Constitution of India, wherein, the persons without qualification appointed on adhoc basis or daily wages seeking for regularisation of their services, the Hon'ble Apex Court has heavily come down against such practice stating that it would amount to perpetuating illegality. On the other hand, it remains the fact that the statutory right of retrenched employees under Section 25(H) of the Industrial Disputes Act, was not an issue before the Hon'ble Court in those two cases at all. Apart from the fact that those two cases were for regularization of illegally appointed persons, which can never be encouraged. In such circumstances, I have no hesitation to come to the conclusion that the Hon'ble Apex Court had no occasion to decide the issue under Section 25(H) of the Industrial Disputes Act, in the above said two judgements and they were relating to public employment as per the rules framed under Article 309 of the Constitution of India.

129. In such circumstances, I am of the considered view that considering the hierarchy of judgements of the Hon'ble Apex Court in interpreting Section 2(oo) of the Industrial Disputes Act relating to retrenchment, Section 25(F) of the Industrial Disputes Act relating to retrenchment compensation and 25(H) of the Industrial Disputes Act, relating to the right of preference in reemployment, the state was certainly having a legal obligation to give preferential right to those retrenched employees, when they have decided as per G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005, to provide employment in respect of the Tamil Nadu State Transport Corporations by recruiting 2000 Drivers and 700 Conductors, to give preference to those Drivers and Conductors, who were earlier employed and retrenched in accordance with law as stated above. Without following the same any orders given to the petitioners, whether they are selection, appointment or proposed to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

be appointed, cannot have a legal basis to stand the scrutiny of law.

130. Therefore, there is absolutely no difficulty to come to the conclusion, even without going into the controversy as to whether there was valid appointments in respect of those writ petitioners who are challenging the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 whether they were only selected or there were only proposal, to come to a conclusion that such proposal or such appointments or such selections are totally opposed to the statutory rights conferred on retrenched employees under Section 25(H) of the Industrial Disputes Act.

131. Therefore, I am in total agreement with the contention raised by the learned Advocate General that the said orders issued in February 2006 to the petitioners, who are challenging the validity of G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 are opposed to and in violation of the statutory provisions of Section 25(H) of the Industrial Disputes Act. It also remains a fact as correctly pointed out by the learned Advocate General that as per the law laid down by the Hon'ble Apex Court consistently, mere selection of persons to a post does not confer on them any right. As correctly pointed out, the Hon'ble Apex Court in the judgement rendered in Shankarsan Dash Vs. Union of India reported in AIR 1991 SC 1612 has held that even a person who finds in the merit list cannot have a right to hold the post. The relevant portion of the judgement of the Hon'ble Apex Court, which runs as follows:

> "7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

and we do not find any discordant note in the decisions in State of Haryana Vs. Subhash Chander Marwaha, (1974) 1 SCR 165: (AIR 1973 SC 2216), Miss Neelima Shangla Vs. State of Haryana, (1986) 4 SCC 268: (AIR 1987 SC 169), or Jitendra Kumar Vs. State of Punjab, (1985) 1 SCR 899: (AIR 1984 SC 1850)."

132. In this case, it is not even the case of the petitioners who challenged the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 that any discrimination is shown by the Transport Corporation in canceling the orders of appointment or selection under the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006. In yet another judgement of the Hon'ble Apex Court in the State of U.P. and others Vs. Rajkumar Sharma and others reported in 2006(3) SCC 330 wherein, the result of selection was published by the Uttar Pradesh Public Service Commission and Uttar Pradesh Government has also forwarded the recommendations in respect of appointment of candidates to the Chief Engineer's Office Hill Cadre Almora and subsequently, when the separate Uthranjal state came into existence on 09.11.2000 and the new government issued orders not to appoint the selected candidates, the Hon'ble Apex Court has held that the selectees cannot claim appointment as a matter of right and holding that even in cases where an appointments are made by mistake that does not confer any right to any person by quoting various judgements. The operative portion of the judgement of the Hon'ble Apex Court, are as follows:

" 13. filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights granted under Articles 14 and 16 of the Constitution. (See Union of India Vs. Ishwar Singh Khatri; Gujarat State Dy. Executive Engineers' Assn. Vs. State of Gujarat State of Bihar Vs. Secretariat Asstt. Successful Examinees Union, 1986, Prem Singh Vs. Haryana SEB; Surinder Singh Vs. State of Punjab and Kamlesh Kumar Sharma Vs. Yogesh Kumar gupta.)

14. Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidate's name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the candidates concerned cannot claim that they have been given a hostile discrimination. (See Shankarsan Dash Vs. Union of India; Asha Kaul Vs. State of J & K; Union of India Vs. S.S.Uppal; Hanuman Prasad Vs. Union of India; Bihar Public Service Commission Vs. State of Bihar; Syndicate Bank Vs. Shankar Paul; Vice-Chancellor, University of Allahabad Vs. Dr.Anand Prakash Mishra

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Punjab SEB Vs. Seema; All India SC & ST Employees' Assn. V. A.Arthur Jeen ; Vinodan T. V. University of Calicut; S.Renuka V. State of A.P. and Batiarani Gramiya Bank V. Pallab Kumar.)

15. Even if in some cases appointments have been made by mistake or wrongly that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See Sneh Prabha Vs. State of U.P.; Secy.Jaipur Development Authority Vs. Daulat Mal Jain; State of Haryana Vs. Ram Kumar Mann; Faridabad C.T.Scan Centre Vs. D.G.Health Services; Jalandhar Improvement Trust V. Sampuran Singh; State of Punjab V. Dr.Rajeev Sarwal; Yogesh Kumar V. Govt.of NCT, Delhi; Union of India V. International Trading Co. And Kastha Niwarak Grihnirman Sahakari Sanstha Maryadit V. President, Indore Development Authority.)"

133. That apart, as rightly pointed out by the learned Advocate General, the Hon'ble Apex Court in the judgement reported in 2006(1) SCC 779 and 2001(6) SCC 380 has held that mere inclusion in the list or even in the merit list published, the selected candidates would not get any right to the post. That was also followed in the judgement of the Hon'ble Apex Court in 2003(10) SCC 144.

134. Therefore, considering all the above said facts, I am of the considered view that the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 relating to Clause 4, Clause 5 and Clause 6 are perfectly in order.

135. As far as the Clause 3 of the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 is concerned, as correctly pointed out by the learned counsel Ms.D.Nagasaila and other learned counsels who have adopted her arguments, there is no rational nexus in conferring the benefits of the G.O. in giving preference in respect of employees appointed from 1997 onwards and were terminated later and to the object of giving preference to the retrenched employees as per Section 25(H) of the Industrial Disputes Act. As I have narrated earlier Section 25(H) of the Act does not prescribe any period of limitation for the purpose of giving preference except to state that the conditions mentioned for the purpose of retrenchment, has to be complied with. Therefore, there is absolutely no reason for the respondent Corporation to restrict the right of preferential treatment in reemployment to be

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

given only to those employees, who were appointed from 1997 and terminated there after, which means retrenched there after.

136. In view of the same, the portion of the said impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006, Clause 3, in so far as it applies regarding reemployment to the persons, appointed from 1997 is set aside, making it clear that the right of reemployment under Section 25(H) of the Industrial Disputes Act, shall be made applicable to all persons appointed by the respondent Corporations earlier and there after terminated irrespective of the year of their appointment and retrenchment.

137. In respect of the contention raised on behalf of the learned Senior Counsel Mr.N.R.Chandran appearing on behalf of the petitioners challenging the G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 that even after giving preference to those persons who are directed to be reemployed or even persons who were retrenched and given benefits under Section 25(H) of the Industrial Disputes Act, there are surplus vacancies available to which the petitioners can be considered. Even though the learned Advocate General has produced the following particulars regarding the vacancy position, which is follows:

SL.No.	Details	No.of persons
1	Retrenched employees from STU's in Tamil Nadu	5810
2	Number of persons re-employment	1040
3	Retrenched employees not re-employment given	4770
4	Available vacancies	6385
5	Employees retrenched coming under purview of G.O.Ms.No.41 dated:13.07.2006	5388
6	Retrenched employees covered by G.O.Ms.No.41 dated 13.07.2006	1040
7	Retrenched employees coming under purview of G.O.Ms.No.41 dated 13.07.2006 who have been not been re-employed till now	4348

138. I do not propose to go into the said fact, making it clear that after giving benefits to the persons eligible under Section 25(H) of the Industrial Disputes Act, it is always open to the respondent Corporations to consider the case of the petitioners, who challenged the impugned G.O.Ms.No.41 Transport

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(C1) Department, dated 13.07.2006 along with other eligible candidates, while making appointments.

139. In view of the reasons stated above the writ petitions are disposed of as follows:

1) W.P.Nos.26195, 26196, 26197, 26198, 26199, 26188, 26194, 26189, 26190, 26191, 26192, 26193, 29269, 29270, 39292, 27849, 30332, 34833, 39516, 39517, 39518, 39519, 34700, 25520, 25521, 25522, 25523, 25524, 25525, 25526, 25527, 25528, 24723, 24724, 24725, 41278, 23559, 25167, 25168, 25169, 25387, 25699, 25700, 25007, 25008, 25009, 25447, 25448, 25449, 25450, 25451, 33517, 24285, 30687, 30688, 28015, 28016, 28017, 28018, 28019, 28020, 28021, 28022, 28023, 38216, 45043, 45062, 45081, 47719, 42523, 43040, 43041, 27081, 27082, 41290, 24805, 24806, 24807, 24808, 24809, 24810 of 2006 challenging the G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 except Clause 3 stand dismissed.

2) W.P.Nos. 26239, 30326, 39363, 34696, 24975, 40363 of 2006 challenging the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 Clause 3 in so far as it restricts the reemployment in respect of persons, who were appointed after 1997 and terminated thereafter stand allowed and the said portion of the impugned G.O. is set aside.

3) W.P.Nos.45459, 34805, 34806, 34807, 34808, 34809, 34810, 34811, 34816, 34817, 34818, 34819, 34820, 34821, 34822, 34823, 34862, 34863, 34864, 34872, 34873, 34874, 34875, 34876, 34877, 34878, 34879, 34880, 34881, 34887, 34888, 34889, 34890, 34891, 34892, 34893, 34894, 34895, 34896, 34897, 45060, 45076, 45077, 45118, 45119, 45120, 45396, 45397, 45422, 45039, 45040, 35412, 33427, 34825 of 2006 stand allowed with a direction to implement the G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 Clause 4 along with Section 25(H) of the Industrial Disputes Act, by giving preference on reemployment.

a) to the employees who were terminated from services subject to the condition that such employees have completed 240 days service in a period of one year during the period of 12 calendar months, preceding the date on which the respondents proposed fill up the vacancies as per G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005.

b) and thereafter to consider the employees who have not completed the required service as per Section 25(H) of the Industrial Disputes Act, for reemployment, however, making it clear that the same shall not apply to any persons who have not actually worked under the respondent Corporations but made a bogus claim.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

c) After exhausting the above said two categories, to consider the cases of the petitioner who challenged the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 for remaining vacancies of Drivers/Conductors in accordance with law.

The writ petitions stand disposed of with the above terms. No Costs. Consequently, connected W.P.M.Ps.are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Secretary,
Government of Tamil Nadu
Transport Department,
Fort St. George, Chennai 9.

2. The General Manager,
State Express Transport Corporation,
Pallavan Salai, Chennai 2.

3. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
37, Mettupalayam Road,
Coimbatore.

4. The General Manager,
The Tamilnadu State Transport Corporation
Salem Division, Salem-7.

5. The General Manager (ADMn.)
Tamilnadu Governemnt Transport Corporation
Coimbatore Ltd., Erode Region.

6. The Managing Director,
Tamil nadu State Transport Corporation Ltd,
Chennimalai Road, Erode.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. The General Manager,
Tamil Nadu State Transport Corporation,
Kumbakonam Ltd, Tiruchy Division,
Tiruchy.

8. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division-II, Erode,
Erode District.

9. The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai, Chennai-2.

10.The General Manager,
Metropolitan Transport Corporation
ltd, (Chennai), Chennai-2...

11.The General Manager,
Metropolitan Transport Corporation,
Pallavan Illam, Pallavan Salai,
Chennai-2.

12. The General Manager, (ADMN)
The Metropolitan Transport Corporation
Chennai-2.

13.The General Manager
Tamil Nadu State Transport Corportion Ltd,
Coimbatore Division, Coimbatore-43.

14.The General manager,
Tamilnadu State Transport Corporation
Salem, Dharmapuri Division, Salem-7

15. The General Manager,
Tamil Nadu State Transport Corporation,
(Coimbatore Division-II) Ltd.
Chennimalai Road, Erode.

16.The General Manager,
Tamilnadu State Transport Corporation
(Kumbakonam Division-I) Ltd,
Kumbakonam - 612 001.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

17.The Managing Director,
The Tamilnadu State Transport Corporation
Salem

18. The Managing Director,
Tamilnadu Transport Corportion ltd,
Formerly Known as Jeeva Transport
Corporation Ltd, Coimbatore
Division-II, Chennimalai, Erode DT.

19.The Managing Director,
Tamilnadu State Transport Corporation
Kumbakonam Division, Periyamilaguparai,
Tiruchy District.

20. The General Secretary
Kovai Arasu Pokkuvarathu Oozhiyar Sangam,
No.109, Park St, Coimbatore - 641 009.

21.The General Manager,
Tamilnadu State Transport Corporation Ltd,
Madras Division, Chennai-2.

22. The General Manager,
Tamilnadu State Transport Corporation Ltd,
Coimbatore Division-II,
Erode, Erode District.

23.The Managing Director,
Tamilnadu State Transport Corporation
Coimbatore Division(2),
Mettupalayam Road, Coimbatore.

24.The General manager,
Tamilnadu State Transport Corporation ltd,
Madurai Division-III, Nagercoil,
Kanyakumari Dist.

25.The Assistant Manager,
Tamilnadu State Transport Corporation Ltd,
Coimbatore Division, Coimbatore-43.

1 cc to M/s. Sudha Ramalingam, Advocate, Sr. 62405
1 cc to Mr.R. Sassetharan, Advocate, Sr. 62864

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

1 cc to Mr.R. Ganesan, Advocate, sr. 62543
1 cc to Mr.D.Nagasaiq Advocate, Sr. 62541
1 cc to M/s. V. Kasinatha Bharathi, advocate, sr. 62743
1 cc to Mr.T. Pappiah Dharmaraju , Advocate, sr. 62655
1 cc to Mr.I.c. Vasudevan, Advocate, sr. 62692
2 ccs to Mr.P. Chinnadurai, Advocate, sr. 62719 & 62720
1 cc to M/s. S. Niveditha, Advocate, sr. 63118
1 cc to Mr.M. Ravi, Advocate, sr. 62979
1 cc to Mr.D. Hariparanthaman, Advocate, sr. 62560
1 cc to Mr.K. Premkumar, Advocate, sr. 63129
1 cc to mr.S.M. Subramaniam, Advocate, Sr. 62604
1 cc to Mr.S.T. Varadharajulu, Advocate, sr, 63041
1 cc to mr.P.H. Manoj Pandian, Advocate, sr. 62571
3 ccs to Mr.I. Davidsingh, Advocate, sr 63181 to 63183
2 ccs to Mr.C.S. Saravanan, Advocate, Sr. 62844 & 62845
2 ccs to Mr.N. Manokaran, Advocate, sr. 62660 & 62661
2 ccs to Mr.M. Palani, Advocate, Sr. 62562
1 cc to Mr.R.T. Doraisamy, Advocate, sr. 62551
6 ccs to Government Pleader, Sr.Nos. 62895 to 62900

JE (CO)
kk rvl,sr,gp,bp, Nm 22/1

सत्यमेव जयते
WEB COPY

https://hcservices.ecourts.gov.in/hcservices/